

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 19th OF DECEMBER, 2023

WRIT PETITION No. 472 of 2016

BETWEEN:-

ROHIT SHUKLA S/O LATE SHRI NAGESHWAR SUKLA,
AGED ABOUT 31 YEARS, QR NO H-192 BAN SAGAR
SAMAN COLONY (MADHYA PRADESH)

.....PETITIONER

(PETITIONER IN PERSON)

AND

1. THE STATE OF MADHYA PRADESH THROUGH THE SECRETARY GENERAL ADMINISTRATION DEPT VALLABH BHAWAN BHOPAL (MADHYA PRADESH)
2. CHIEF ENGINEER MINERAL RESOURCES DEPARTMENT WATER RESOURCES BHAWAN TULSI NAGAR BHOPAL (MADHYA PRADESH)
3. TECHNICAL ADMINISTRATION OFFICER FOR CHIEF ENGINEER WATER RESOURCE DEPARTMENT WATER REWSOURCE DEPATRMENT REWA (MADHYA PRADESH)
4. DEPUTY COMMISSIONER (NODAL OFFICER) PUBLIC GRIEVANCE REDRESSAL CELL REWA DISTT. REWA (MADHYA PRADESH)
5. CHIEF PERSONAL/KARMIK OFFICER FOR CHIEF ENGINEER WATER RESOURCE DEPARTMENT REWA (MADHYA PRADESH)
6. CHIEF ENGINEER BAN SAGR PROJECT WATER RESOURCE DEPARTMENT REWA (MADHYA PRADESH)
7. EXECUTIVE ENGINEER BAN SAGAR UPPER PURVA CANAL REWA DIVISION REWA (MADHYA PRADESH)

8. SUPREINTENDENT ENGINEER BAN SAGAR NAHAR DISTT. REWA (MADHYA PRADESH)
9. SUPREINTENDENT ENGINEER WATER RESOURCE DEPARTMENT BHOPAL (MADHYA PRADESH)
10. COMMISSIONER REWA DIVISION REWA DIVISION REWA (MADHYA PRADESH)
11. COLLECTOR UMARIA DISTT. UMARIYA (MADHYA PRADESH)

.....RESPONDENTS

(BY MS. SHIKHA SHARMA-ADVOCATE)

.....
This petition coming on for admission this day, the court passed the following:

ORDER

With the consent of parties, the matter is heard finally.

2. By the present petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order dated 30.12.2011 passed by the Chief Engineer Water Resources Department, Bhopal whereby the representation submitted by the petitioner for grant of compassionate appointment was rejected.

3. According to the petitioner, the petitioner's father Shri N.P.Shukla was working in *Upper Poorva Nahar UP-Sambhag 3 Rewa* who died in harness on 2.1.1994 in a road accident and in the same road accident, his mother was also died. At that time, petitioner was just 9 years old.

4. The petitioner filed the application for compassionate appointment in 2001 on humanitarian ground along with the required documents. The petitioner was asked to submit certain documents pertaining to medical certificate and police verification and the same were also filed and at that time,

the petitioner was 18 years old. Thereafter, the Technical Administration Officer for Chief Engineer informed to the Chief Engineer on 21.5.2004 that there is no vacancy of Assistant Grade III and therefore, the compassionate appointment was not given to the petitioner. The petitioner made several request letters and reminders but the same were not considered. The petitioner was offered the post of Contract Teacher Grade III but the petitioner did not accept the same as the petitioner was eligible for appointment on the post of Assistant Grade II/Assistant Grade III. Thereafter the prayer/representation of the petitioner was rejected on 6.6.2006.

5. The petitioner challenged the rejection order dated 6.6.2006 by preferring W.P.No.8125/2009 which was decided by the order dated 3.10.2011 by which the petitioner was directed to file a detailed claim afresh in accordance with Circular dated 20.2.2011 whereby new policy for grant of compassionate appointment was floated by the State Govt. The petitioner filed the fresh representation but the representation of the petitioner was rejected on 26.12.2011 on the ground that his father had died on 2.1.1994 whereas the application for compassionate appointment was filed after a period of seven years and as per the instruction of GAD dated 27.1.2001, the application for compassionate appointment cannot be accepted after such a long time.

6. The petitioner appeared in person and argued at length.

7. According to the petitioner, his application for compassionate appointment was kept pending for a long time and the same has not been decided. The Deputy Commissioner, Revenue Rewa Division Rewa issued a letter to the Collector, District Umaria by which the case of the petitioner was forwarded for compassionate appointment against the unreserved vacant post of Assistant Grade III but the same was not complied with. It is informed to the

petitioner by letter dated 29.8.2006 that the after seven years from the date of death of his father, the eligibility for compassionate appointment was expired therefore, the compassionate appointment cannot be granted to the petitioner.

8. The petitioner further submits that vacant post was available but instead of appointing the petitioner on the vacant post of Assistant Grade III, he was offered the appointment as *Samvida Shikshak Varg III* whereas he was entitled for the permanent appointment. In respect of the delay, it was argued by the petitioner that at the time of death of his father he was minor and he could apply within one year from the date of attaining the majority however, he applied even before completing the age of 18 years and therefore, it cannot be said that he was not entitled for the compassionate appointment. The circular dated 28.2.2011 is not applicable in the matter of the petitioner as the same does not deal with the case of minor dependent. The policy dated 29.9.2014 provides in Clause 3.2 that if the dependant of the deceased employee was minor at the time of his death he may apply for compassionate appointment within a period of one years from the date of attaining the majority therefore, the petitioner has applied within the limitation period and the appointment cannot be denied on the ground that the application has been moved after seven years.

9. The petitioner further submits that his date of birth is 6.6.1985 and he attained the majority on 6.6.2003 and he once again applied on 24.6.2003 therefore there was no delay in applying for compassionate appointment. He further argued that no communication was received by him for appointment on the post of *Samvida Shala Shikshak* and in the absence of his consent the matter was returned back to the Commissioner, Rewa Division, Rewa without appointing the petitioner on any post. The petitioner relied on the judgment

passed by the Division Bench of this Court in *W.A.No.977/2021 on 12.7.2022 (Dharmendra Kumar Tripathi Vs. State of M.P. & Ors.)* whereby the Division Bench has held that by appointing candidate on contractual post, the requirement of appointment or grant of compassionate appointment cannot be satisfied. The application seeking appointment on compassionate ground continues to remain. Appointment on contractual basis is not an answer to the application seeking appointment on compassionate ground. The relevant paragraphs of the judgment reads as under:

"We are of the view that the plea of the State cannot be accepted. An appointment on compassionate grounds is an appointment to a regular post. Therefore, all consequences will follow. An appointment based on contract would entail the consequences that arise out of a contractual appointment. The rules do not permit substitution of an appointment on compassionate grounds through contractual appointment. Therefore, the appointment of the petitioner on contractual ground is illegal. The respondents had no authority to do so. The further contention that as on that day the posts were not available may be a matter of fact to be ascertained. Even assuming the posts were not available that does not give a right to the respondents to convert an appointment on compassionate grounds on contractual basis. Hence, we do not find any ground in the said contention.

The contention that there is a delay in filing the writ petition is also misconceived and cannot be accepted. Here is a man who was entitled for grant of appointment on compassionate ground. In law, such an application has still not received any consideration by the respondents. Only because a contractual appointment has been made does not indicate that the application for grant of compassionate appointment has been satisfied. In law, the application seeking grant of appointment on compassionate grounds continues to remain. They have still not granted him compassionate appointment nor have they rejected the

application. Therefore, when they have granted him appointment on contractual basis, it is not an answer to the application seeking grant of appointment on compassionate grounds. Therefore, the delay, if any, is to be held against the respondents and not against the petitioner. Therefore, we find that the right of the petitioner cannot be taken away merely because of he challenging the cancellation of the same.

So far as Clauses 4, 5 and 6 are concerned, nowhere does it indicate that a compassionate appointment can be substituted by a contractual appointment. We have also noticed that Clause-4 pertaining to other important condition would also indicate that a person entitled for appointment on compassionate grounds will be appointed to the regular vacant post.

In view of the action of the respondents being unsustainable in law where grave injustice has occasioned, we are of the view that ends of justice will be met by directing the respondents to pay costs to him. As a result of the reasonings herein above, the writ appeal is allowed. The order of the learned Single Judge dated 06.09.2021 passed in W.P. No.17990 of 2014 is set aside.

The writ petition is allowed on the following terms:-

- (a) The respondent No.3 is directed to appoint the petitioner on compassionate grounds to one of the three posts which the respondents claim are vacant. The same to be done within a period of eight weeks from the date of receipt of a copy of this order.
- (b) The respondents are directed to pay costs in a sum of Rs.1,00,000/- (Rs. One Lakh only) to the appellant jointly and severally within a period of eight weeks.

Pending interlocutory applications are disposed off."

Court in the matter of *Ganesh Shankar Shukla Vs. State of U.P. & Anr.) in S.L.P. 3528/2022* whereby the Apex Court has held that if the children of the deceased employee are minor, the rigor of limitation cannot be extended to their case and they are entitled for compassionate appointment even it cannot be considered that as the applicant survived for years after the death of the employee, therefore, he lost the right to claim compassionate appointment. The relevant paras of the order are as under:

"2. The challenge in the present appeal is to an order passed by the High Court of Judicature at Allahabad on 26.10.2021, whereby an intra-court appeal against the order passed by the learned Single Judge on 04.08.2021 was dismissed, wherein the appellant had claimed appointment on compassionate grounds.

3. The facts of the present case show complete apathy on the part of the State in dealing with the minor children of the deceased Geeta Devi, who was working as a teacher. She died in harness on 13.03.2003. Sh. Kripa Shankar Shukla, father of the appellant, died earlier. At the time of death of the mother, the appellant was five years old, whereas his elder sister was eight years old.

4. The appellant and his sister had to invoke the jurisdiction of the State Public Service Tribunal, Lucknow, for release of pension on account of death of Geeta Devi. It shows that even after the death of Geeta Devi, the minor children were not paid the pension leading them into penury. The order was passed by the Tribunal on 31.03.2016, but still payment of pension was not made. The order was implemented only in the year 2018, after filing of contempt petition.

5. The appellant applied for compassionate appointment on 17.02.2020, which request was declined. The learned counsel for the respondent-State argued that the compassionate appointment is not the source of recruitment and is to be offered to meet the emergent financial distress suffered by the family. Since the appellant has survived for

17 years after the death of his mother, therefore, the appellant has lost the right to claim compassionate appointment. The learned counsel for the State also relies upon Rule 5 of U.P. Recruitment of Dependents of Govt. Servants Dying in Harness Rules, 1974, which contemplates the time of five years to make an application to seek compassionate appointment, though there is a provision for relaxation of such time limit.

6. In fact, both the children of Geeta Devi continued to be minor even after five years. Therefore, the rigour of Rule 5 cannot be extended in the case of the present appellant who was minor at the time of death of his mother, the father having died earlier.

7. In these circumstances, even when the appellant had survived on account of the financial support of the maternal grandparents, the respondent is not justified in raising a technical plea of delay in seeking appointment on compassionate grounds in the facts of the present appeal.

8. Some of the Judgments have been referred to by the learned counsel for the respondent-State, but it is the facts of each case, which are relevant. The facts of the present case show total inhumane approach in dealing with two minor children of the deceased. The delay was on account of the fact that they had no money, except the bare survival provided by the grandparents.

9. Consequently, the present appeal is allowed in view of the peculiar hard facts of the case. The appellant to apply for compassionate appointment to the State, giving his educational qualifications within one week. Considering the said application, the respondent-State will make appointment within next two months.

11. The petitioner prayed for issuance of appropriate directions to grant compassionate appointment according to his eligibility.

12. Learned P.L. appearing on behalf of respondent/State has

submitted that petitioner is not entitled for compassionate appointment as he applied after the expiry of seven years period from the date of death of his father. No post lying vacant of Assistant Grade III under general category and therefore, the appointment on the post of Assistant Grade III cannot be granted, however, the petitioner was offered the post of *Samvida Shala Shikshak* on contract basis but the same was not accepted by the petitioner therefore, his case has been closed. The petitioner could survive for the long time after death of his father and it appears that no financial help was required to the petitioner and consequently the petitioner is not entitled for the compassionate appointment.

13. Heard the parties and perused the record.

14. It is not in dispute that father of petitioner died in a road accident on 2.1.1994 in harness and in the same road accident, the mother of petitioner was also died and the petitioner was just 9 years old at that time. However, with the help of relative, petitioner could get the education and applied for compassionate appointment.

15. The first objection raised by respondents that the application for compassionate appointment can be considered only within a period of seven years from the date of death of employee and thereafter the same cannot be considered is misconceived because according to the circular dated 29.9.2004 issued by the GAD, as per Clause 3.2, if the dependent child is minor at the time of death of govt. servant he may apply within a period of one year from the date of attaining the majority. The petitioner attained the majority on 6.6.2003 whereas he applied on 24.6.2003 therefore, there was no delay and on this ground the compassionate appointment cannot be refused.

16. The second contention of respondents that no vacant post of

Assistant Grade II or III was available therefore, the petitioner was offered the *Samvida Shala Shikshak* on contract basis but as the same was not accepted by the petitioner therefore, this case was closed and returned back to Commissioner, Rewa Division, Rewa, is also not according to the spirit of the policy. The petitioner is entitled for the compassionate appointment on the regular vacant post and he cannot be offered the contractual appointment. The Division Bench in the matter of **Dharmendra Kumar Tripathi (supra)** has held that compassionate appointment should be on the regular vacant post and even by granting the contractual appointment, the requirement for grant of compassionate appointment will not be satisfied. Therefore, the petitioner could not have been offered the contractual appointment, however, if he has not accepted the same, no adverse effect will be attributed to the prayer of the petitioner for compassionate appointment.

17. The third contention raised by the respondents that petitioner could survive for such a long period and therefore, he is not in need of financial assistance and in these circumstances he is not entitled to compassionate appointment is also not acceptable. The Apex Court in the case of **Ganesh Shankar Shukla (supra)** has held that even when the applicant had survived on financial support of relatives, the respondents cannot raise or justify a technical plea that the applicant is not in need of financial assistance therefore, there is no need to grant the compassionate appointment. The respondents in the present case have not come with a specific plea that petitioner is engaged in another job or earning well, on the contrary when the petitioner applied for compassionate appointment, he was just 18 years old and he was not earning at all. The petitioner cannot be penalized for keeping pending his application for

compassionate appointment for a long period and the respondents cannot claim the advantage of the same. The matter remain pending not due to the fault of the petitioner.

18. In view of the above, the present petition is *allowed*.

19. The respondents are directed to grant the compassionate appointment to the petitioner as per his eligibility within a period of three months from the date of this order.

No order as to costs.

P/-



(VINAY SARAF)
JUDGE