

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE**

WRIT PETITION No.4187 of 2017

Between:-

**GAURAV DUBEY S/O LATE SHRI
KANHAIYA LAL DUBEY, AGED 24
YEARS, OCCUPATION: STUDENT,
R/O BTP SCHOOL ROAD, SHIVPURI
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ARUN DUDAWAT - ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH
THROUGH ITS PRINCIPAL
SECRETARY, DEPARTMENT OF
HOMES, VALLABH BHAWAN,
BHOPAL (MADHYA PRADESH)**
- 2. THE DIRECTOR GENERAL POLICE,
JAIL & REHABILITATION
SERVICES, JAIL HEADQUARTER,
BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

**(BY SHRI A.K. NIRANKARI – GOVERNMENT
ADVOCATE.)**

Reserved on 08/07/2022

Delivered on 22/07/2022

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

ORDER

(1) The present petition under Article 226 of the Constitution of India had been filed by the petitioner being aggrieved by the arbitrary and malafide action on the part of respondents No.1 & 2 in not giving compassionate appointment to the petitioner in place of his father who was posted in Sub-Jail, Shivpuri and had expired on 20/08/2004, while he was on duty. On 07/12/2004 mother of the petitioner had moved an application seeking appointment of the petitioner as a “Boy Orderly”, since there was no response, in the year 2015 the petitioner under Right to Information Act inquired about his pending application. Vide letter dated 21/07/2016 information was forwarded to the petitioner, where from it came to the knowledge of the petitioner that his

candidature was rejected in lieu of clause 4.1 of the State Government's policy dated 18/08/2008, which speaks of non-eligibility of a person for appointment on compassionate ground if any member of the family is already in Government service and since his mother was working in Janpad Panchayat as Assistant Grade III he was held not to be entitled.

(2) Learned counsel for the petitioner vehemently argued that the application for appointment on compassionate ground was moved by the mother of the petitioner for his appointment on 07/12/2004, well within the time frame of 7 years as provided in the policy dated 18/08/2008, but since at that time he was minor aged about 11 years, his application was required to be considered as per clause 7.1 of the policy. It was further argued that it was only in the year 2016, when the petitioner sought information with regard to his application for compassionate appointment that he was informed that his application was rejected in the year 2011 itself and the same was informed to his mother vide communication dated 26/11/2011 and 25/06/2013. It was further contended that the ground of rejection was only that his mother was in government employment (Panchayat Services) and apart from that there was no other ground of rejection. It was further argued that the authorities misdirected themselves in rejecting the application in so far as the very ground of rejection was not tenable, as Panchayat services are not Government services. He placed reliance on decision of Division Bench of this Court in the

matter of **Janpad Panchayat And Jila Vs. State of Madhya Pradesh reported in 1992 MPLJ 804 & Panchayat Karamchari Sangh Vs. State of Madhya Pradesh passed in M.P.No.963/1983 passed on 30/7/1988.**

(3) Per contra learned Government Advocate while supporting the impugned rejection order and relying upon the averments made in the return memo contended that at the time of death of his father, the petitioner was aged 11 years and was studying in Class VI and when his application was considered in the year 2011 it was found that his mother Smt. Lata Dubey was working as Assistant Grade-III in Janpad Panchayat and therefore as per clause 4.1 of the policy issued by GAD dated 18/08/2008, since one of the family member of the deceased employee was in Government service, the petitioner was held not entitled for appointment on compassionate ground. It was further submitted that the rejection order was communicated to the petitioner vide letter dated 07/08/2011 and the present petition had been filed in the year 2017, the petition suffers from delay and laches, hence deserves to be dismissed on this count also and lastly since as per the policy the claim for compassionate appointment can be considered only within seven years from the date of death of the employee, now at this belated stage appointment on compassionate ground cannot be granted, thus, prayed for dismissal of the petition.

(4) Heard the learned counsel for the parties at extenso and

perused the record.

(5) The sole issue before this Court is whether the respondents have rightly considered the case of the petitioner for compassionate appointment under the policy issued in the year 2008? For that the factual matrix is to be reiterated. The father of the petitioner died on 20.08.2004 when admittedly, the policy of 2008 was in force and the petitioner was minor, aged around 11 years. The Hon'ble Apex Court in the case of **Canara Bank V/s. M. Mahesh Kumar reported in (2015) 7 SCC 412** has held that the policy prevailing at the time of death of the employee is required to be applied while considering the application for compassionate appointment and since the appointment of the petitioner was rejected only on the ground that as per clause 4.1 of the policy of 2008 since his mother was working as a Government servant in Panchayat Department, he is not entitled for compassionate appointment.

(6) This aspect of the matter if now analysed taking resort to decision passed by Hon'ble Supreme Court in the matter of **Bhawani Prasad Sonkar Vs. Union of India and others, reported in 2011 (4) SCC 209**, makes it clear that the concept of compassionate appointment is recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is

binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

“(I) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(II) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(III) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(IV) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class

III and IV posts.”

Thus, in the above context clause 3.2 and 7.1 of the policy, which speaks of maintainability of application for compassionate appointment within seven years of death of employee in harness and on behalf of minor within one year of his attaining majority, is seen, it could safely be concluded that the very application filed by the mother of the petitioner on 07/12/2004, within four months of death of his father, who died on 20/08/2004 was well within the time but was decided only in the year 2011 and the candidature of the petitioner was rejected on such ground which cannot be said to be genuine.

(7) The ground of rejection as mentioned in the order impugned had occasioned the present controversy. From the facts as enunciated, it emerges that due to callous insolence of the respondents the case of the petitioner which could have been considered way back in the year 2004, when the father of the petitioner died, was kept lingering for 7 years and as per the documents made available to the petitioner under Right to Information Act regarding his application dated 04/12/2015 under the Act, on 21/07/2016, the petitioner came to know that his application for compassionate appointment was rejected on a frivolous ground that since his mother was in Government service under Janpad Panchayat as Assistant Grade III, as per clause 4.1 of the policy dated 18/08/2008 he was not entitled for

compassionate appointment without considering the fact that Panchayat services are not Government services.

(8) It is also worth mentioning that on 02/12/2004 mother of the petitioner had moved an application for his appointment who was minor in the year 2004, for his appointment as “Child Orderly”, but the same was also not considered by the Respondents. (Reference be had to regulation 60 of Madhya Pradesh Police Regulations) which is reproduced as under:

“60. Boy-orderlies.- A certain number of appointments as constables may be given by Superintendents to boys under the ages of 18. They are known as “boy-orderlies”, and receive half the pay of an ordinary constable. In making these appointments preference should always be given to sons or relatives of police officers, or of men who have rendered good service to Government. As soon as a boy-orderly satisfies the conditions laid down in Regulation 53, he should be given a preferential claim to appointment in the first vacancy that occurs.”

(9) From bare perusal of the documents available on record it is seen that neither the application in the year 2004 filed by mother of the petitioner, for appointment of the petitioner as “Boy Orderly” was considered nor at later point of time though his application appears to be within 7 years as envisaged in clause 3.2 of the policy, was considered properly and was rejected on improper ground.

(10) So far as impugned rejection order is concerned, it is

against the mandate of judgments of Division Bench of this Court in the matter of **Janpad Panchayat Vs. State of Madhya Pradesh reported in 1992 MPLJ 804** and **Panchayat Karmachari Sangh Vs. State of Madhya Pradesh passed in M.P. 963/1983 decided on 30/07/1988**, wherein it had laid down in principle that Panchayat servants are not Government servants.

(11) Though it a settled law that a compassionate appointment scheme is a non-statutory scheme and is in the form of a concession and cannot be claimed as a matter of right by the claimant to be enforced through a writ proceeding and it is justified when it is granted to provide immediate successor to the deceased employee. Mere death of a Government employee in his harness, does not entitle the family to claim compassionate employment. It is also very well settled that being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve and since the policy partakes the character of the service rules, it is binding both on the employer and the employee. The policy conditions as are applicable to the employee, with same vigour would apply to the employer and if the policy conditions are not adhered to by the employer, its decision cannot be said to be proper.

(12) Further the competent authority is also required to examine the financial condition of the family of the deceased employee and only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered

to the eligible member of the family of the deceased employee, but this exercise had also not been done in the present matter.

(13) So far as delay on the part of petitioner in approaching this Court is concerned this Court finds that it could be attributed more to the respondents. If the application would had been considered at a proper time, this situation would not have arose, thus, the delay could be attributed to the callousness of the respondents in deciding the application.

(14) In view of the above discussion and for the reasons stated above, the order denying the petitioner compassionate appointment is hereby quashed and set aside. The respondents are directed to consider the case of the petitioner for appointment on compassionate grounds under the policy of 2008 and if he is otherwise found eligible, to appoint him on post of his entitlement. The aforesaid exercise shall be completed within a period of four weeks from today.

(15) Before parting with the present order, I am constrained to observe that considering the object and purpose of appointment on compassionate grounds, i.e., a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy

prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications.

(16) I am constrained to direct as above as it is found that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach this Court seeking a Writ of Mandamus for the consideration of their applications. Even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order of rejection before the High Court which leads to pendency of litigation and passage of time, leaving the family of the employee who died in harness in the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. They are considered after several years or are not considered at all as in the instant case. If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies or the rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a tardy way. The consideration must be fair, reasonable and based on relevant consideration. The application should not be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only the object and purpose of appointment on compassionate grounds can be

achieved.

(17) The petition is allowed to the extent mentioned above.

Pawar*

(Milind Ramesh Phadke)
Judge
22/07/2022

