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**THE HIGH COURT OF MADHYA PRADESH**  
**Writ Petition No.4061/2007**  
**Ramnaresh Sharma Vs. State of M.P. and others**

**Gwalior, Dated :28/02/2019**

Shri Pawan Dwivedi, Counsel for the petitioner.

Shri R.K. Soni, Counsel for the State.

Shri Gaurav Mishra, Counsel for respondent no. 6.

This petition under Article 226 of the Constitution of India,  
has been filed seeking the following relief(s) :

“7. सहायता:-

याचिकाकर्ता की ओर से विनम्र निवेदन है कि याचिकाकर्ता की याचिका स्वीकार की जाकर, प्रतियाचिकाकर्ता क्रमांक 1 लगायत 5 को आदेशित किया जावे कि याचिकाकर्ता को, याचिकाकर्ता की मां श्रीमती सुशीलावाई की मृत्यु के पश्चात् अनुकम्पा नियुक्ति योग्यतानुसार तत्काल दिलायी जावे एवं प्रतियाचिकाकर्ता क्रमांक 6 द्वारा अवैधानिक रूप से अनुकम्पा नियुक्ति प्राप्त की गयी है, इसलिए प्रतियाचिकाकर्ता क्रमांक 6 की अनुकम्पा नियुक्ति निरस्त कर, तत्काल प्रभाव से हटाया जावे। अन्य न्यायोचित सहायता जो माननीय न्यायालय उचित समझे वहक याचिकाकर्ता प्रदान की जावे।”

2. The necessary facts for the disposal of the present petition in short are that on 11-9-1983, a bus which was full of passengers, had drawn in Quari River, as a result of which, the mother of the petitioner, namely, Smt. Sushilabai also expired. In the said accident, total 51 persons had lost their lives. Accordingly, a declaration was made by the then Chief Minister of the State that the next of the deceased would be given Govt. employment, accordingly, letter dated 6-1-1984 was written by G.A. Department to the Collector, Morena. In the year 1984, the petitioner was aged

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about 12 years. He passed his high school examination in the year 1989 and passed his higher secondary school examination in the year 1991. After passing his Higher Secondary Examination, he made an application, on 14-7-1992, for appointment on the basis of the declaration made by the Chief Minister and letter dated 6-1-1984. A recommendation was also made by the then M.L.A. for appointment of the petitioner on compassionate ground. Accordingly, by letter dated 19-7-2005 and 14-2-2006, he had made a prayer for his appointment on compassionate ground. However, in the year 1999, the respondent no.6, the nephew of the deceased Sushilabai was given appointment on compassionate ground. A complaint was made in writing. As no action was being taken, therefore, the petitioner filed a writ petition before this Court, which was registered as W.P. No.1725/2007(s). It is the contention of the petitioner that the appointment of the respondent no.6 was held to be illegal, but the petitioner was not aware of the said report. However, when the petitioner came to know about the enquiry report, therefore, he withdrew the writ petition on 11-4-2007. However, no action has been taken on the said report and, accordingly, the present petition has been filed.

3. During arguments, it was submitted by the Counsel for the

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petitioner, that the respondent no. 6, being aggrieved by the enquiry report had filed a writ petition before this Court, which was registered as W.P. No. 2539/2007(s), however, the said petition was dismissed by this Court by order dated 19-6-2007 with following observations :

*“Prima facie, it appears that the petitioner was not entitled for compassionate appointment because he was not a family member of the deceased Sushila Bai and the impugned order is recommendatory in nature. No action has been taken by the authority with regard to cancellation of appointment of the petitioner.*

*In such circumstances, in my opinion, there is no merit in this petition, it is hereby dismissed.”*

4. It is submitted that in spite of the dismissal of the writ petition filed by the respondent no.6, the respondents have not taken a final decision in the matter and the respondent no.6 is still working on the post of Upper Division Teacher.

5. *Per contra*, in return it is submitted by the respondent/State that since, the petitioner's application for appointment on compassionate ground was filed after lapse of 7 years from the date of death of his mother, therefore, the same was not maintainable. It was further submitted that the appointment of the respondent no.6 has already been cancelled by order dated 24-3-2007.

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6. It is submitted by the Counsel for the petitioner, that in view of the stand taken by the State Govt, this Court by order dated 20-10-2016 had finally disposed of the petition, with liberty to consider the candidature of the petitioner for appointment on compassionate ground, as the appointment of the respondent no.6 has already been cancelled. The respondent no.6, thereafter filed a review application which was registered as R.P. No.515/2016 and submitted that the appointment of the respondent no.6 has not been cancelled so far and only an enquiry report was submitted and accordingly, this Court by order dated 6-4-2017, has recalled the order dated 20-10-2016 and that is how, the present petition has been once again listed.

7. Thus, it is clear that by order dated 24-3-2017, only a recommendation was made to cancel the appointment of the respondent no.6 and in fact no action has been taken on the said recommendation.

8. It is submitted by the Counsel for the respondent no.6 that at the time of the death of Smt. Sushila bai, her children were minor and their father was not in a position to look after them, therefore, he had shifted to the house of the respondent no.6 and had also given an affidavit, recommending the appointment of the

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respondent no.6 on compassionate ground. The respondent no.6 had moved an application for appointment on compassionate ground mentioning specifically that he is the nephew of the deceased Smt. Sushila bai. The appointment was not obtained either by playing fraud or by suppressing any material fact. It is further submitted that the respondent no.6 was given appointment in the year 1999 and 20 long years have passed and much water has flown under the bridge. In case, the appointment of the respondent no.6 is quashed, then it would result in undue hardship to the respondent no.6 and his family. Further, it is submitted that after the recruitment, the respondent no.6 has now become a civil servant and his services can be terminated, only in accordance with the provisions of M.P. Civil Services (Classification, Control and Appeal) Rules 1996 (In short, Rules, 1966). It is further submitted that the writ petition suffers from delay and laches. It is further submitted that as the first writ petition filed by the writ petitioner was withdrawn without seeking any liberty to file a fresh one, therefore, the second writ petition on the basis of same cause of action is not maintainable.

9. To buttress his contentions, the Counsel for the petitioner has relied upon the judgment passed by the Supreme Court in the case

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of **Sarguja Transport Service Vs. State Transport Appellate Tribunal, Gwalior and others** reported in AIR 1987 SC 88.

10. Heard the learned Counsel for the parties.

11. Before advertng to the facts of the case, it would be necessary to consider the preliminary objection with regard to maintainability of this petition.

12. The Supreme Court in the case of **Sarguja Transport Service (Supra)** has held as under :

*“9..... in any event there is justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India once again. While the withdrawal of a writ petition filed in High court without permission to file a fresh writ petition may not bar the other remedies like a suit or a petition under Article 32 of the constitution since, such withdrawal doesnot amount to resjudicata, the remedy under Article 226 of Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission to file a fresh petition.....”*

13. If the facts of the present case are considered in the light of the judgment passed by the Supreme Court in the case of **Sarguja Transport Service (Supra)**, then it is the contention of the petitioner, that he was not aware of passing of the order dated 24-

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3-2007, therefore, he had filed the WP No.1725/2007 (s) for deciding his objections. However, when the petitioner came to know about the fact, that the respondents have already initiated action on his complaint and an enquiry report has been submitted, then no cause of action had survived and accordingly, the W.P. No.1725/2007 (s) was withdrawn. Later on, the respondent himself challenged the enquiry report by filing a W.P. No.2539/2007(s), which was dismissed by this Court. Now, the fresh petition has been filed seeking action on the enquiry report, therefore, the subsequent/present writ petition has been filed on the different cause of action and, therefore, it is maintainable.

14. The Counsel for the respondent no.6 could not confront the submissions of the Counsel for the petitioner, that in the earlier writ petition i.e., W.P. No.1725/2007 (s) he had not made any reference to the enquiry report, and no relief was sought by him on the basis of enquiry report. The fact of challenging the enquiry report dated 24/3/2007 by the respondent no.6 and the dismissal of his writ petition has also not been denied by the respondent no. 6. However, it is submitted by the Counsel for the respondent no.6, that since, in the present petition there is no reference to the order dated 19-6-2007 passed in W.P. No.2539/2007, therefore, the same

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cannot be considered.

15. So far as the non-reference to the order dated 19-6-2007 passed in W.P. No. 2539/2007 is concerned, it is true that the petitioner has not tried to bring the said fact on record, by amending the writ petition, but, it appears that in the Review Petition No.515/2016 filed by the respondent no.6 himself, he had taken a specific stand that the order dated 24-3-2007 was merely recommendatory in nature and no final order has been passed and this Court in W.P. No.2539/2007 by order dated 19-6-2007, while dismissing the writ petition filed by the respondent no.6, has also held that the order dated 24-3-2007 was merely recommendatory in nature. Thus, where the respondent no.6 himself has taken the benefit of order dated 19-6-2007, therefore, now he cannot be allowed to submit that this Court should not take note of order dated 19-6-2007 passed by this Court in W.P. No.2539/2007. By order dated 24-3-2007 the recommendation has been made to cancel the appointment of the respondent no.6 on the following grounds :

1. That the respondent no.6 cannot be said to be the family member of Late Smt. Sushila bai.
2. That instead of appointing the respondent no.6 on the



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lowest available post, he has been wrongly given  
appointment on the post of Upper Division Teacher.

16. In view of the dismissal of the petition filed by the respondent no.6, now he cannot be permitted to challenge the order dated 24-3-2007 on any of the grounds.

17. So far as the present petition filed by the petitioner is concerned, in the considered opinion of this Court, the same is maintainable, as this petition has been filed on the basis of fresh cause of action.

18. The Supreme Court in the case of **Virendra Kumar Gautam Vs. Karuna Nidhan Upadhyay** reported in (2016) 14 SCC 18 has held as under :

“31. On behalf of the respondents, reliance was placed upon a decision of this Court in *G.N. Nayak v. Goa University* on the question of estoppel. In an identical situation, this Court held that when the cause of action were different, the withdrawal of earlier writ petition without liberty to file a fresh application, will not have any impact in making the challenge when the subsequent challenge was to the selection ultimately held while the earlier challenge was on the basis of an apprehended bias. We find that the said line of reasoning fully supported the case of the writ petitioners. Even in the case on hand, earlier when writ petitioners filed the writ petition, the same was at a stage when the interview was about to be held. By the time when the writ petition was pending, since the

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interview was held and the results were ultimately published, the withdrawal of the earlier writ petition without liberty and a fresh challenge made to the ultimate selection on various grounds cannot be held to have disentitled the writ petitioners to raise the challenge.

32. It was contended on behalf of the appellants that the withdrawal of the earlier writ petition by one of the writ petitioners would disentitle and estop the petitioners from making a challenge to the selection made in the interview. We have extensively discussed the said issue and have held how in the facts of this case such an abstract proposition of law cannot be applied. We therefore do not find any merit in the said submission on the ground of principle of estoppel. We therefore reject the said submission outright.”

19. Thus, it is clear that the principle of estoppel does not apply, where the subsequent petition has been filed on the basis of fresh cause of action. Accordingly, the objection raised by the respondent no.6, with regard to maintainability of this petition, is rejected and it is held that the present petition, which has been filed on the basis of fresh cause of action is maintainable.

20. So far as the merits of the case are concerned, the undisputed facts are that the mother of the petitioner had expired in a road accident, in which the bus had drawn in Quari River as a result of which 51 persons had lost their lives. An announcement was made by the then Chief Minister that the next of the deceased would be

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given Govt. job. Accordingly, an order dated 6-1-1984 was also issued. The petitioner was minor on the date of death of his mother. The respondent no.6 is the nephew of the deceased Smt. Sushila bai. The respondent no.6, accordingly, moved an application for appointment on compassionate ground. It is the claim of the respondent no.6, that the father of the petitioner had also given an affidavit, expressing his no objection to grant of appointment on compassionate ground and accordingly, he was given appointment on the post of Upper Division Teacher in the year 1999. The petitioner obtained majority in the year 1990 and passed his Higher Secondary School Examination in the year 1991 and accordingly, he too made an application for appointment on compassionate ground. The respondents no.1 to 5 have filed their return. In their return, they have not claimed that no application was filed by the petitioner for appointment on compassionate ground, but they have stated that since, the application was filed after lapse of 7 years, therefore, the petitioner was not entitled for appointment on compassionate ground. Thus, filing of the application by the petitioner, in the year 1992 for compassionate ground has not been disputed. It is also an undisputed fact, that even the respondent no.6 was not given any appointment on

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compassionate ground till 1992, and he has been given appointment, only in the year 1999. Thus, it is clear that even if the father of the petitioner had earlier given any NOC for appointment of the petitioner on compassionate ground, then it had lapsed after the petitioner attained majority and after an application for appointment on compassionate ground was made by the petitioner, then the respondents were under obligation to take fresh No Objection from the father of the petitioner. Thus, this Court is of the considered opinion, that in the year 1992, the petitioner had filed an application for appointment on compassionate ground. So far as non-entitlement of the petitioner to seek appointment on compassionate ground because of lapse of 7 years from the date of death of his mother is concerned, this Court is of the considered opinion, that the policy for appointment on compassionate ground is not applicable in the present case. The mother of the petitioner was not a Govt. Employee. A declaration was made by the then Chief Minister, to give a Govt. job to the next of the deceased, and accordingly, order dated 1-6-1984 was issued. Further, this Court is of the considered opinion, that while giving appointment to the respondent no. 6 in the year 1999, the respondents should not have relied upon the NOC given by the father of the petitioner, as the

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same was given during the minority of the petitioner. Undisputedly, the respondent no.6 was the nephew of deceased Smt. Sushila bai and, therefore, he was not the family member of deceased Smt. Sushila bai. Whether the respondent no. 6 could have been given appointment on the post of Upper Division Teacher or not is an another aspect, which is required to be taken into consideration by the respondents, while considering the enquiry report dated 24-3-2007.

21. So far as the submission made by the Counsel for the respondent no.6 that since, the respondent no.6 is a Civil Servant therefore, his services cannot be terminated except in accordance with the provisions of Rules, 1996 is concerned, suffice it to say, that the question involved in the present case is that whether the respondent no. 6 could have been given appointment or not? It is not a case, that whether the respondent no.6 has committed any misconduct or not? Therefore, the provisions of Rules, 1996 would not apply to the facts and circumstances of the case.

22. It is next contended by the Counsel for the respondent no.6 that since, he had not suppressed any material fact and had not played fraud for securing job is concerned, it is suffice to say that after the petitioner attained majority and since he had also applied

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for appointment on compassionate ground on the basis of letter dated 6-1-1984, then any NOC given by the father of the petitioner, in favour of the respondent no.6 had lost its effect, and the department, should have acted strictly in accordance with the declaration made by the Chief Minister and letter dated 6-1-1984. Thus, this contention made by the Counsel for the respondent no.6 is rejected.

23. It is next contended by the Counsel for the respondent no.6, that since, near about 13 years have passed, therefore, no action should be taken on the recommendation dated 24-3-2007. The contention made by the Counsel for the respondent no.6 cannot be accepted. The present petition was filed in the year 2007 and unfortunately, it remained pending for 12 long years. No steps were taken by either of the parties for early disposal of the petition. However, merely because the petition remained pending for 12 years, would not create any equity in favor of the respondent no. 6 for the simple reason, that the authorities were also sitting over the recommendation dated 24-3-2007. It is not a case, where the rights of the parties are being decided after a lapse of several years. The appointment of the respondent no. 6 was already held to be contrary to law, but for the one reason or the other, the authorities

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did not take any final decision, in spite of the fact, that the writ petition filed by the respondent n. 6 was already dismissed in the year 2007 itself. Thus, no equity can be shown in favor of the respondent no.6.

24. So far as the contention raised by the respondent no. 6 with regard to delay and laches is concerned, the recommendations for cancelling the appointment of respondent no.6 was made on 24-3-2007 and the present petition was filed on 27-8-2007. Thus, it cannot be said that the present petition suffers from delay and laches. Merely because the petition has remained pending for 12 years, would not make it liable for dismissal on the ground of delay and laches.

25. Surprisingly, the respondents no. 1 to 5 have not taken a final decision on the report dated 24-3-2007 and has allowed the respondent no.6 to continue in service, in spite of the fact that the writ petition no. 2539/2007 filed by the respondent no. 6 was already dismissed by this Court, by holding that no final decision has been taken on the order/recommendation dated 24-3-2007.

26. Accordingly, the respondents no.1 to 5 are directed to take final decision on letter dated 24-3-2007 passed by Incharge Officer (Establishment), Collectorate, Sheopur, within a period of 3

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months from today by passing a speaking order. If the final order is passed against the respondent no.6, then the respondents no.1 to 5 shall also be under obligation to pass a specific order, with regard to recovery of salary received by the respondent no.6, from the person(s)/authority(s), who are responsible for sitting over the recommendation dated 24-3-2007 from 19-6-2007 i.e., from the date of dismissal of W.P. No.2539/2007 filed by the respondent no. 6. The respondents no.1 to 5 are also directed to consider the application of the Petitioner dated 14-7-1992 for appointment on compassionate ground, as he is entitled for appointment in the light of the declaration made by the Chief Minister and the order dated 6-1-1984. If the petitioner is granted appointment, then he shall not be entitled to seek any consequential benefits from the date of his application.

27. With aforesaid observations, the petition is finally **disposed of.**

**Arun\***

**(G.S. Ahluwalia)**  
**Judge**