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THE HIGH COURT OF MADHYA PRADESH
W.P. No.8296/2016
Smt. Meena Kushwah Vs. State of M.P. and others

Gwalior, Dated :13/12/2018

Shri Ravi Jain, Counsel for petitioner.

Shri Vivek Jain, Counsel for respondents/State.

Heard on the question of admission.

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

“It is, therefore, most humbly prayed that the writ petition may kindly be allowed and a writ of Mandamus, Certiorari or any other suitable writ, order or direction may kindly be issued. Order dated 11-8-2016 may kindly be quashed and the direction may kindly be given to the respondents to reconsider the application of petitioner for appointment on compassionate ground in accordance with the circulars of State Government as prevailing at the time of death of father-in-law of petitioner to give compassionate appointment to the petitioner.”

According to the petitioner, she is the wife of adopted son of Shri Ram Sevak Kushwah, who died in harness on 20-5-2015. The husband of the petitioner had already expired prior to the death of Ram Sewak Kushwah. After the death of Ram Sevak Kushwaha, an application was filed by the petitioner for appointment on compassionate ground. The said application has been rejected by the respondents by order dated 11-8-2016, on the ground that the petitioner is not entitled for appointment on compassionate ground, as per the

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Scheme.

Challenging the order dated 11-8-2016, it is submitted by the counsel for the petitioner that the scheme dated 18-8-2008 for giving appointment on compassionate ground was in vogue on the date of death of Ram Sevak Kushwaha. According to the Scheme, the following persons were entitled for appointment on compassionate ground :

2. अनुकम्पा नियुक्ति की पात्रता

2.1 दिवंगत शासकीय सेवक की पत्नि, अथवा पूर्णतः आश्रित पति को, अथवा

2.2 दिवंगत शासकीय सेवक का पुत्र अथवा अविवाहित पुत्री अथवा ऐसी विवाहित पुत्री जिसके पति की मृत्यु हो चुकी हो अथवा तलाकशुदा हो, किन्तु शर्त यह होगी कि ऐसी अविवाहित, विवाहित अथवा तलाकशुदा पुत्री दिवंगत शासकीय सेवक की मृत्यु के समय उस पर पूर्णतः आश्रित होकर उसके साथ रह रही हो, अथवा

2.3 अविवाहित दिवंगत शासकीय सेवक के भाई अथवा अविवाहित बहन को दिवंगत शासकीय सेवक के माता पिता की अनुशंसा के आधार पर।

2.4 एक से अधिक अनुकंपा नियुक्ति के पात्र सदस्य होने पर दिवंगत शासकीय सेवक की पत्नी/पति की अनुशंसा एवं पति / पत्नी के न होने पर परिवार की सर्वसम्मति से किसी एक सदस्य को अनुकंपा नियुक्ति की पात्रता होगी। परिवार में सहमति न होने पर संबंधित जिले के कलेक्टर द्वारा यह निर्णय लिया जावेगा कि किसे अनुकंपा नियुक्ति दी जावे।

Thus, from the plain reading of this Scheme, it is clear that at the relevant time, even the adopted son was not entitled for appointment on compassionate ground. Furthermore, as per the Scheme, the daughter-in-law of the

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deceased employee is not entitled for appointment on compassionate ground. Thus, the respondents have rightly rejected the claim of the petitioner for appointment on compassionate ground.

It is submitted by the counsel for the petitioner that Allahabad High Court in the case of **Smt Geeta Singh VS. State of U.P. And others** reported in **2009(120) FLR 5**, and **Zila Panchayat Kaushambi through its Chairman and another Vs. Lalti Devi** reported **2008(116) FLR 1030** has held that the daughter-in-law is also included in the definition of family of deceased employee.

With due respect to the above mentioned judgments, it is held that the judgments cited by the petitioner have no application in the present case as they are clearly distinguishable. Under the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (in Short Rules, 1974), the word "family" has been defined and thus, the question was that whether the daughter-in-law has to be included in the definition of family or not. However, in the present case, the persons, who are eligible for appointment on compassionate ground, have been specifically mentioned, which does not include daughter-in-law. It is further well

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established principle of law that the Courts cannot legislate.

The Supreme Court in the case of **S.B. Batra Vs. Tarana**

Batra reported in **(2007) 3 SCC 169** has held as under :

16.It is only the legislature which can create a law and not the court. The courts do not legislate, and whatever may be the personal view of a judge, he cannot create or amend the law, and must maintain judicial restraint.

Accordingly, it is held that as the case of the petitioner is not covered by the circular issued by the State governing the appointment on compassionate ground, therefore, no relief can be granted to the petitioner.

Accordingly, the petition fails and is hereby **dismissed**.

Arun*

(G.S. Ahluwalia)
Judge