



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE ASHISH SHROTI

WRIT PETITION No. 10849 of 2021

SATENDRA PARMAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri B.P. Singh - Advocate for the petitioner.

Shri N.K. Gupta - Govt. Advocate for the respondents/State.

WITH

WRIT PETITION No. 1069 of 2021

DINESH UPADHYAY

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri B.P. Singh - Advocate for the petitioner.

Shri N.K. Gupta - Govt. Advocate for the respondents/State.

WRIT PETITION No. 2417 of 2021

KRISHANKANT KANKAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri B.P. Singh - Advocate for the petitioner.

Shri N.K. Gupta - Govt. Advocate for the respondents/State.



WRIT PETITION No. 3844 of 2021

ANISH KHAN

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri B.P. Singh - Advocate for the petitioner.

Shri N.K. Gupta - Govt. Advocate for the respondents/State.

WRIT PETITION No. 3847 of 2021

SERVESH BATHAM

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri B.P. Singh - Advocate for the petitioner.

Shri N.K. Gupta - Govt. Advocate for the respondents/State.

WRIT PETITION No. 3860 of 2021

ANUJ SINGH TOMAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri B.P. Singh - Advocate for the petitioner.

Shri N.K. Gupta - Govt. Advocate for the respondents/State.

WRIT PETITION No. 3864 of 2021

SMT. GUNJAN SHRIVASTAVA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri B.P. Singh - Advocate for the petitioner.

Shri N.K. Gupta - Govt. Advocate for the respondents/State.



WRIT PETITION No. 5102 of 2021
PRIYANKA BHOPATKAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri B.P. Singh - Advocate for the petitioner.

Shri N.K. Gupta - Govt. Advocate for the respondents/State.

WRIT PETITION No. 10848 of 2021
SHANI RAJAK

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri B.P. Singh - Advocate for the petitioner.

Shri N.K. Gupta - Govt. Advocate for the respondents/State.

Reserved on: 24/09/2025

Pronounced on : 08/10/2025

ORDER

The petitioners have filed these writ petitions, invoking Article 226 of the constitution of India, challenging the order whereby their initial compassionate appointment order has been modified by inserting a new condition that they would work on consolidated wages fixed by Collector/Labour Commissioner and on successful completion of first three years, the order of regularization of their service as temporary member of Work Charged and Contingency Fund Establishment shall be passed by Competent Authority. Since, all these writ petitions are



similar on facts and question of law, therefore, they are being disposed of by this common order. For convenience sake, the facts are taken from W.P. No.1069 of 2021 filed by one Dinesh Upadhyay.

[2]. One late Shri Krishna Kumar Upadhyay was initially engaged on daily wages in respondent Water Resources Department in the year 1984. Subsequently, he was regularized on the post of Electrician Grade-III in work charged establishment vide order, dated 01.02.1990. He died in harness on 08.11.2018 leaving behind him his widow, two sons and a daughter. The petitioner is the son of deceased employee.

[3]. After the death of his father, the petitioner applied for compassionate appointment. His request was favorably considered and vide order, dated 13.11.2019, (Annexure P/5), he was appointed on compassionate grounds on the post of Unskilled Assistant in the Pay Band of 4440-7440 plus GP of Rs.1300. The petitioner accordingly joined and started working on the said post in the office of respondent no.5. Pursuant to the order, dated 08.10.2020, passed by Engineer-in-Chief, respondent no.2, the impugned order came to be passed by Chief Engineer (E/M), the respondent no.3, whereby the initial order of compassionate appointment has been modified by inserting Clause 14 as under:

“[मध्यप्रदेश शासन, सामान्य प्रशासन विभाग {वेतन आयोग प्रकोष्ठ} के पत्र क्रमांक 192/601/1/वे.आ.प्र./84 भोपाल दिनांक 10 मई 1984 की कण्डिका-6 अनुसार प्रथम तीन साल तक कलेक्टर/श्रमायुक्त द्वारा द गेणित दर पर निश्चित वेतन देय होगा, एवं उसके पश्चात तीन वर्ष की सेवा अवधि सफलतापूर्वक पूर्ण करने के पश्चात कार्यालय मुख्य अभियंता, वि/यों,(नियुक्तकर्ता अधिकारी) द्वारा कार्यभारित एवं आकस्मिकता निधि से वेतन पाने वाले कर्मचारी सेवा का अस्थायी सदस्य मान्य करते हुऐ



कार्यभारित स्थापना के "अकुशल सहायक" पद पर नियमानुसार
नियमितिकरण संबंधी आदेश पृथक से जारी किया जावेगा।}”

[4]. The petitioners are aggrieved by the insertion of this clause as a condition of their appointment and have thus challenged the same in the present writ petitions. This Court vide order, dated 20.01.2021, passed the interim order thereby directing that the service conditions of the petitioners shall not be changed. Thus, the impugned order has not been given effect so far.

[5]. Challenging the impugned orders in these petitions, learned counsel for petitioners submitted that no condition, as directed vide impugned order, could be imposed on the petitioners in case of compassionate appointment inasmuch as the policy for grant of compassionate appointment issued vide circular, dated 29.09.2014, read with circular, dated 31.08.2016, do not provide for any such condition. It is his submission that the matter of compassionate appointment is governed by aforesaid policy and no condition can be imposed by respondents which is not provided in the aforesaid policy.

[6]. The learned counsel also submitted that the provisions of notification, dated 10.05.1984, have been wrongly applied in the present case inasmuch as the said notification was issued providing for applicability of Revision of Pay Rules, 1984 to work charged employees who came in work charged establishment from daily wage category. As per his submission, the said notification was issued only for such employees who are appointed in work charged establishment from daily wages. He also submitted that vide another notification, dated



15.12.1992, the notification, dated 10.05.1984, has been clarified stating that the effect of notification, dated 10.05.1984, is only upto 31.12.1989.

[7]. The learned counsel for petitioners also placed reliance upon Division Bench judgment of this Court in the case of ***Dharmendra Kumar Tripathi vs. State of M.P. & Ors.*** passed in ***W.A. No.977 of 2021*** to say that the appointment on compassionate grounds can be made only on regular post and, insertion of condition, as done by respondents vide impugned order, is not permissible. It is his submission that inserting aforesaid condition in petitioners' appointment orders would render their appointments temporary which is impermissible as per the aforesaid Division Bench judgment. The learned counsel, therefore, prayed for setting aside of impugned orders in all these cases.

[8]. On the other hand, the learned counsel for respondents/State supported the impugned order and submitted that notification, dated 10.05.1984, specifically provided for appointment on consolidated wages fixed by Collector/Labour Commissioner for three years. However, while issuing appointment order of petitioners, the same was not taken note of and as soon as the mistake came to notice of respondent no.2, directions were issued for suitable modification of their appointment orders. It is his submission that policy for compassionate appointment only provide for relaxation from facing recruitment process and the compassionate appointee cannot seek exemption from other conditions which are mandatory for appointment on the post. The learned counsel also submitted that the notification, dated 15.12.1992, is



not attracted in the facts of the case. He thus prayed for dismissal of writ petition.

[9]. Heard the arguments and perused the records.

[10]. Based upon submissions made by counsel for both the sides, following issues arises for consideration:

- i. Whether the provisions of circular, dated 10.05.1984, (Annexure P/8) are confined only upto 31.12.1989 or the same are applicable for future appointment in work charged & contingency establishment for all times to come ?
- ii. Whether the petitioner, being a compassionate appointee, is exempted from applicability of provisions of notification, dated 10.05.1984 ?
- iii. Whether insertion of condition vide impugned order, dated 29.12.2020, (Annexure P/8) is impermissible and is bad in law ?

Issue No.i:

[11]. The notification no.192/601/1/वि.अ.प्र./84, dated 10.05.1984, (Annexure P/8) was issued by General Administration Department of State of Madhya Pradesh issuing instructions in relation to employees getting salary from work charged and contingency fund and for providing them revised pay-scale as per Choudhary Pay Commission recommendations. Clause 4 to 6 being relevant for the present discussion, are reproduced hereunder:

“4. भविष्य में इस सेवा के कर्मचारियों की भरती जिला स्तर चयन समिति द्वारा की जाय। जिला स्तर चयन समिति का अध्यक्ष, कलेक्टर या उनके द्वारा मनोनीत वरिष्ठ डिप्टी कलेक्टर होगा तथा जिला रोजगार अधिकारी उसका सचिव होगा। यह समिति सिंचाई विभाग, लोक निर्माण विभाग एवं लोक स्वास्थ्य यांत्रिकी विभागों के कार्यपालन इंजीनियरों को



सदस्य बनाकर और यदि आवश्यक हो तो अन्य विभागों से कलेक्टर द्वारा किसी एक सदस्य को सहयोजित कर गठित की जानी चाहिये। इस समिति में दो अशासकीय व्यक्ति, जिनका नामांकन राज्य शासन करेगा भी सदस्य होंगे। आदिवासी जिलों में जिला संयोजक, आदिम जाति कल्याण को सदस्य बनाया जाना चाहिये, अन्य जिलों से हरिजनों के हितों की देख-भाल करने वाले अधिकारी को समिति का सदस्य बनाया जाना चाहिये।

5. इस चयन समिति को प्रत्येक वर्ष कार्यभारित तथा आकस्मिकता वेतनभोगी नियोजन संबंधी आवश्यकताओं का निर्धारण चाहिए और लिखित अर्हकारी परीक्षा तथा सक्षम भेट आयोजित करनी चाहिये और उम्मीदवारों की एक चयन सूची तैयार करनी चाहिये तथा उसी में से कार्यभारित और आकस्मिकता वेतनभोगी एवं दैनिक वेतनभोगी नियोजन के लिये नियुक्तियों की जानी चाहिये।

6. इस सेवा के कर्मचारियों की भरती प्रथम तीन साल तक कलेक्टर द्वारा निश्चित वेतन एवं उसके पश्चात् अस्थायी सदस्य मानकर परिशिष्ट एक के अनुसार पुनरीक्षित वेतनमान में की जाएगी। पूर्व में नियुक्त ऐसे कर्मचारी, जो परिशिष्ट-दो में दी गई अर्हता रखते हों, उन्हें जिला स्तरीय चयन समिति के समक्ष उपस्थित होना पड़ेगा किन्तु चयन होने पर उन्हें सेवा में आने की तिथि से 3 वर्ष पश्चात् सेवा का सदस्य माना जावेगा।”

[12]. From reading aforesaid clauses of notification, dated 10.05.1984, it is evident that the same are applicable for future appointments in the establishment for all times to come and are not confined upto 31.12.1989 as submitted by petitioners' counsel.

[13]. Further, Clause 2 of the Notification No. 477/ए.फ.-5/4/वे.आ.प्र./91, dated 15.12.1992, (Annexure P/9), which is relied upon by petitioner's counsel, does not dilute clause 4 to 6 of notification, dated 10.05.1984. In fact, it clarifies the benefit to be given to persons working on daily wages and are regularized in work charged establishment who have completed three years on 01.01.1990. At the cost of repetition, it be noted that Clause 4 of notification, dated 10.05.1984, specifically states about all appointments to be made in future. Therefore, the submission made by petitioners' counsel that



notification, dated 10.05.1984, has been clarified by notification, dated 15.12.1992, is also not acceptable. In fact, it clarifies notification, dated 09.01.1990, which is mentioned in reference no.2 in notification, dated 15.12.1992.

[14]. Thus, it is to be held that the provisions of notification, dated 10.05.1984, (Annexure P/8) are applicable to everyone who enters into service in work charged and contingency fund establishment by way of direct recruitment including compassionate appointee. Further, as per Clause 6 of notification, incumbent is first required to be paid consolidated salary as fixed by Collector/Labour Commissioner and after successful completion of three years, the order for grant of regular pay scale in work charged establishment is required to be passed by Competent Authority.

Issue No.ii:

[15]. It has been a settled legal proposition that compassionate appointment is not a service condition of deceased employee and, therefore, his dependent cannot claim compassionate appointment as of right. Further, compassionate appointment is not a regular mode of recruitment rather it is an exception to normal mode of recruitment provided to a member of family of deceased employee in case of penury. The object of providing compassionate appointment is only to enable the family of deceased employee to tide over the sudden financial crisis befallen on the family on account of untimely death of bread winner. The matter of compassionate appointment is governed by the policy framed for this purpose. The object of such policies is to give immediate



succor to the family. It is also settled that the compassionate appointment can be given strictly in accordance with the provisions of the policy framed for the purpose and there can be no deviation from the provisions of policy. Some judicial pronouncements in this regard may be profitably referred at this stage.

[16]. The Apex Court in the case of *Umesh Kumar Nagpal Vs. State of Haryana* reported in *(1994)4 SCC 138*, the Court held as under:

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the



family of the deceased, and it is only if it is satisfied, that but for the provision of 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. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.

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7. It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an ad hoc basis.”



[17]. Again, in the case of *State of Uttar Pradesh & Ors. Vs. Mohd. Rehan Khan* reported in *2022 SCC Online SC 1899*, the Apex Court held as under:

“10. The direction of the High Court that the respondent be considered for a Class IV post is not consistent with the provisions of law. There is no vested right to compassionate appointment. Compassionate appointment, it is well settled, is an exception to Article 16 of the Constitution which embodies the principle of equality of opportunity in matters of public employment. Compassionate appointment is offered to a person belonging to the family of a deceased employee who has died in harness to tide over the financial crisis resulting from the death of the wage earner of the family. The terms on which compassionate appointment is offered under the rules or scheme governing compassionate appointment have to be complied with.

11. The respondent sought appointment as an Assistant in the office of Economics and Statistics and was granted such an appointment. **An employee who has been appointed on compassionate grounds is not granted an exception from the service conditions that have to be complied under the relevant Rules.** Rules relating to compassionate appointment must be interpreted bearing in mind that it is an exception to the principle of equality of opportunity. Compassionate appointments provide an entry-level concession. The appointment cannot be used to seek subsequent concessions merely because the appointment was made on compassionate grounds. Any concession subsequently provided, unless the rules stipulate, would be violative of the principle envisaged in Articles 14 and 16 of the Constitution. **Appointment through compassionate grounds only grants the family of the employee who dies in harness an entry into the services, which is one of the many modes of appointment. Once appointed, all the employees irrespective of the mode of appointment are to be treated alike, unless the relevant Rules stipulate otherwise.** Rule 5(1)(i) of the 2014 Rules stipulates that



for a person to be appointed to a post on compassionate grounds, he should fulfill the prescribed educational qualification.....”

[18]. Very recently, the Apex Court has held that the compassionate appointment can be given only within the four corners of policy framed for the purpose, in the case of *Tinku vs. State of Haryana* reported in **2024 SCC Online SC 3292**. The Court held as under:

“12. As regards the compassionate appointment being sought to be claimed as a vested right for appointment, suffice it to say that the said right is not a condition of service of an employee who dies in harness, which must be given to the dependent without any kind of scrutiny or undertaking a process of selection. It is an appointment which is given on proper and strict scrutiny of the various parameters as laid down with an intention to help a family out of a sudden pecuniary financial destitution to help it get out of the emerging urgent situation where the sole bread earner has expired, leaving them helpless and maybe penniless. Compassionate appointment is, therefore, provided to bail out a family of the deceased employee facing extreme financial difficulty and but for the employment, the family will not be able to meet the crisis. This shall in any case be subject to the claimant fulfilling the requirements as laid down in the policy, instructions, or rules for such a compassionate appointment.

13. It must be clearly stated here that in a case where there is no policy, instruction, or rule providing for an appointment on compassionate grounds, such an appointment cannot be granted.

14. The very basis and the rationale, wherever such policies are framed for compassionate appointment is with an object to grant relief to a family in distress and facing destitution, and thus an exception is culled out to the general rule in favour of the family of the deceased employee. This is resorted to by taking into consideration the services rendered by such employee and the consequent legitimate legal expectations apart from the



sudden change in status and affairs of the family because of the unexpected turn of events, i.e. the loss of the sole bread earner.”

[19]. In order to achieve the object of providing compassion to family of deceased employee in case of penury, the General Administration Department of State of Madhya Pradesh has formulated a Scheme for providing compassionate appointment vide circular, dated 29.09.2014, (Annexure P/4). By virtue of Clause 11 of circular, initially the benefit of compassionate appointment was not available to dependents of employees working in work charged establishment. Later on, vide circular, dated 31.08.2016, the policy, dated 29.09.2014, has been made applicable to this class of employees also. It is thus not in dispute that petitioner's compassionate appointment is governed by circular, dated 29.09.2014. Various provisions of policy, now needs to be examined.

[20]. Clause 3 of circular provides for conditions for eligibility for compassionate appointment. It provides that a member of family of deceased employee shall be eligible for compassionate appointment only when he possesses necessary qualifications for appointment in Government service. Clause 6 thereof provides for relaxation which are available in case of compassionate appointment. Clause 6 of circular, dated 29.09.2014, reads as under:

“6. अनुकंपा नियुक्ति की आवश्यक अर्हताएं तथा शिथिलीकरण

- 6.1 मृतक शासकीय कर्मियों के ऐसे आश्रित को भी अनुकंपा नियुक्ति दी जा सकेगी, जिसने मध्यप्रदेश से बाहर की शैक्षणिक संस्था से परीक्षा उत्तीर्ण कर, शैक्षणिक योग्यता धारित की हो।
- 6.2 वित्त विभाग के ज्ञाप क्रमांक एल 17-2/94/ब-7/चार, दिनांक 30.09.94 द्वारा रिक्त पदों को केवल अतिशेष कर्मियों से भरने संबंधी निर्देश एवं वित्त विभाग द्वारा समय-समय पर स्वीकृत पदों में अतिशेष



कर्मचारियों से भरती की शर्त अनुकंपा नियुक्ति के मामलों में लागू नहीं होगी, अर्थात् इन पदों पर अनुकंपा नियुक्ति दी जा सकेगी।

- 6.3 भरती नियमों में प्रावधानित चयन प्रक्रिया तथा रोजगार कार्यालय में पंजीयन संबंधी शर्त से छूट रहेगी।
- 6.4 अधिकतम आयु सीमा संबंधी शर्त मृतक शासकीय सेवक की पत्नी के मामले में पूर्णतः शिथिल रहेगी। साथ ही, मृतक शासकीय सेवक के आश्रित को अनुकंपा नियुक्ति देने के संबंध में अधिकतम आयु सीमा में पांच वर्ष की छूट दी जाएगी।
अर्थात् किसी भी प्रवर्ग के लिए $40 + 5 = 45$ वर्ष से अधिक नहीं होगी।
- 6.5 दिवंगत शासकीय सेवक के आश्रित को सहायक ग्रेड-3 के पद पर अनुकंपा नियुक्ति के लिये कम्प्यूटर डिप्लोमा तथा कम्प्यूटर टायपिंग दक्षता प्रमाण पत्र परीक्षा मान्यता प्राप्त संस्था से उत्तीर्ण किये जाने हेतु 3 वर्ष का समय दिया जावेगा। तीन वर्ष में भी वांछित परीक्षाएं उत्तीर्ण न करने पर संबंधित कर्मचारी द्वारा परीक्षाएं उत्तीर्ण करने के प्रयासों और टायपिंग क्षमता: जो अर्जित की गई हो, को देखते हुए नियोक्ता अधिकारी द्वारा एक वर्ष की अवधि और बढ़ाई जा सकती है। इस अवधि के व्यतीत होने पर भी संबंधित कर्मचारी द्वारा वांछित परीक्षाएं उत्तीर्ण न करने पर उनकी सेवाएं समाप्त की जा सकेंगी।
- 6.6 मध्यप्रदेश सिविल सेवा (सेवा की सामान्य शर्तें) नियम 1961 के नियम 6 के उप नियम (6) जिसमें प्रावधान है कि कोई भी उम्मीदवार जिसकी दो से अधिक संतान जीवित होने पर एक का जन्म यदि 26 जनवरी 2001 को या उसके पश्चात् हुआ हो, किसी भी शासकीय सेवा या पद पर नियुक्ति के लिये अपात्र माना जावेगा, से अनुकंपा नियुक्ति के प्रकरणों में छूट रहेगी।”

[21]. A reading of this clause makes it evident that in the matter of compassionate appointment, the relaxation is provided only from facing regular recruitment process (clause 6.3) and in the matter of maximum age (clause 6.4). Further clause 6.5 gives initial exemption from possessing Computer Diploma/CPCT qualification, however, the same is required to be acquired by compassionate appointee within the time stipulated in the said clause.



[22]. From the aforesaid enunciation of legal position and various provisions of policy framed vide circular, dated 29.09.2014, it becomes evident that a compassionate appointee is not immune from the operation of the general rules of service. What the scheme for compassionate appointment does is to provide certain exemptions and relaxations which are specifically codified in the policy. Those exemptions and relaxations are that - firstly, the ordinary procedure for recruitment need not be observed; secondly, a relaxation in the upper age limit; and thirdly, in the fulfillment of the passing of a Computer Diploma/CPCT. The exemptions and relaxations must be confined to those which are prescribed by the policy and cannot be extended beyond what has not been prescribed. Determining the nature and extent of exemptions and relaxations is a matter of executive policy. A person who is appointed on a compassionate basis obtains employment without going through the ordinary procedure of recruitment and after availing certain relaxations. Again, here it is necessary to emphasize that these relaxations are granted because they are envisaged in the policy.

[23]. As held by Apex Court in the case of *Mohd. Rehan Khan (supra)*, a person appointed on compassionate basis, has to fulfill all the other obligations and requirements of the post on which he is appointed. Such an appointee cannot claim immunity from an assessment by the employer of the suitability for retention in service. The policy, dated 29.09.2014, does not provide that a person who is recruited on compassionate basis in work charged establishment, would be exempted from provisions of notification, dated 10.05.1984, which is otherwise



applicable in case of normal appointment in the establishment. The contention of petitioner's counsel that policy, dated 29.09.2014, does not provide for impugned condition, is thus not acceptable. The position is otherwise. Once the policy do not provide for exemption from such condition, the appointment would have to be made in a manner consistent with the service rules/instructions.

[24]. The Apex Court has made pertinent observation regarding mode of appointment on compassionate grounds, in the case of ***Mohd. Rehan Khan (supra)***. The appointment through compassionate grounds only grants the family of the employee, who dies in harness, an entry into the service, which is one of the many modes of appointment. Once appointed, all the employees irrespective of the mode of appointment are to be treated alike, unless the relevant Rules stipulate otherwise.

[25]. The Full Bench judgment of Allahabad High Court in the case of ***Sr. General Manager, Ordinance Factory, Kalpi Road, Kanpur Vs. Central Administrative Tribunal & another*** reported in ***2016 SCC Online All. 106*** is also relevant for present discussion. It was a case where compassionate appointee was given appointment on probation. The objection was raised that since the appointment on compassionate basis is a permanent one, the appointment cannot be made on probation. The Full Bench repelled the objection and answered the referred questions as under:

“(1) Re Question (1): Where a person is appointed on a compassionate basis as a dependent member of the family of an employee of the State who has died in harness, such an appointment can be made on probation. The object and



purpose of appointing a person on probation is to determine the suitability of the person for retention in service. Appointment of a person who is engaged on a compassionate basis on probation is not contrary to law or unlawful.

(2) Re Question (2): Since an appointment on compassionate grounds on probation is also a regular appointment and a person appointed as such is not offered a temporary appointment, such an appointee can be placed on probation in the first instance.

(3) Re Question (3): The appointment of a person on a compassionate basis on probation is permissible in law.”

[26]. Like in case of probationer, the incumbent is initially paid salary at basic of pay-scale and after confirmation, he becomes entitled to get increments in pay scale. Likewise, in the present case also, the appointment given to petitioners remains an appointment in work charged establishment. The only rider is that they are required to successfully work on consolidated salary for first three years and, thereafter, they are required to be given regular pay scale in the establishment. What is the meaning of “successfully completing three years period” used in notification, dated 10.05.1984, is not argued by parties and, therefore, the same is not being interpreted by this Court.

[27]. The learned counsel for petitioners heavily relied upon Division Bench judgment of this Court in the case of ***Dharmendra Kumar Tripathi*** (supra). At the outset, it be mentioned here that the aforesaid judgment was challenged by State of M.P. before Apex Court in SLP(C) No.2122/2023. The SLP was dismissed vide order, dated 27.05.2024, with the following observations:



“As the order passed by the High Court has now been complied with; however, leaving the question of law open, in the peculiar facts and circumstances of the case, we dispose of this special leave petition as infructuous.”

[28]. On facts, it was a case where, upon death of his father, the petitioner therein was given contractual appointment on 26.06.2002 as Samvida Shala Shikshak Grade II. The appointment was later on cancelled on 26.11.2002 on the ground that the said post was not available. This action of respondents was challenged before the High Court. The writ petition was dismissed and, therefore, writ appeal was filed. In these facts, considering the policy as prevailing then, the Division Bench held that a compassionate appointment is an appointment on regular post. The Division Bench held as under:

“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.”

[29]. The Division Bench thus considered the policy prevalent then. However, in the policy, dated 29.09.2014, it has been specifically provided that in case the post in regular establishment are not available, the offer for appointment on post of Samvida Shala Shikshak (clause 8.1). Thus, the Division Bench judgment, since has been given based on earlier policy, the same is not attracted in the facts of the present case. As held by Apex Court in above referred cases, a compassionate appointment has to be made strictly in accordance with the policy. Further, the issue being discussed in this batch of petitions, was not



raised in the case before Division Bench. Thus, the petitioners do not get any help from the Division Bench judgment rendered in the case of *Dharmendra Kumar Tripathi* (supra).

Issue No.iii:

[30]. In view of discussion of facts and law made above, this Court is of the considered opinion that there is nothing wrong or contrary to law if a person appointed to a post on a compassionate basis in work charged establishment, is placed on consolidated wages fixed by Collector/Labour Commissioner for first three years as is provided in notification, dated 10.05.1984.

[31]. Accordingly, the impugned orders do not call for any interference by this Court. The same are upheld. The petitions, being found to be without any substance, are **dismissed**.

(ASHISH SHROTI)
JUDGE

Vpn/-