

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

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

&

HON'BLE SHRI JUSTICE ASHISH SHROTI

WRIT APPEAL No. 1576 of 2025

KULDEEP RAWAT

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Mr. Shashi Kant Chaturvedi - Advocate for the appellant.

Mr. B.M. Patel - Government Advocate for the State.

ORDER

(DELIVERED ON THIS 02nd DAY OF JULY, 2025)

Per: Justice Ashish Shroti

This appeal under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005, has been filed by the appellant/petitioner being aggrieved by dismissal of his writ petition (W.P.No.12707/2025) by the learned Single Judge vide order, dated 21.04.2025, whereby the rejection of his claim for grant of compassionate appointment has been upheld.

2. The facts as gathered from the record of the case are that the appellant's father, Hakim Singh, was working as Samay Palak in work charge establishment of the respondent Water Resources Department and was posted in the office of respondent no.4. He died in harness on 16.10.2015.

3. The appellant made an application on 07.01.2016 for grant of compassionate appointment on account of death of his father. It appears that no action was taken on his application and the matter remained pending for more than 8 years. On 30.07.2024, respondent no.4 forwarded the appellant's application to the Superintending Engineer of the respondent department at Gwalior. Superintendent Engineer vide impugned letter, dated 13.08.2024, has communicated to respondent no.4 that the appellant has not been found eligible for grant of compassionate appointment inasmuch as his father expired before coming into force of the policy, dated 31.08.2016, for grant of compassionate appointment. The learned Single Judge vide impugned order has dismissed the writ petition on two counts. It has been held that the policy as prevailing on the date of death of employee would be applicable. The other ground for dismissal of writ petition is the delay on the part of the appellant in approaching the Court.

4. Challenging the impugned order passed by learned Single Judge, the learned counsel for the appellant submitted that the policy prevailing on the date of consideration of the application needs to be applied and since the application, dated 07.01.2016, was pending when the policy, dated 31.08.2016, came into force, his application was required to be considered under the said policy. In support of his submission, he placed reliance upon the Apex Court judgment in the case of *N.C. Santhosh Vs. State of Karnataka & others, reported in 2020(7) SCC 617*. The learned counsel for the appellant further submitted that the dismissal of the writ petition on account of delay is also unsustainable inasmuch as the delay was infact on the part of the respondents in considering and taking decision on his application. He thus, prays for indulgence by this Court.

5. The learned Government Advocate on the other hand supported the impugned order and submitted that since on the date of death of appellant's father, there was no policy available for grant of compassionate appointment, the appellant cannot claim consideration of his application

under the subsequent policy. He further submitted that even if there was delay on the part of the respondent authority, appellant was expected to have approached this Court within a reasonable time. He also submitted that the fact that the appellant has survived for more than 9 years without any compassion, shows that the appointment on compassionate ground is not warranted. He thus, prays for dismissal of the appeal.

6. Considered the arguments and perused the record.

7. The admitted facts available on record are that the appellant's father expired on 16.10.2015. Thereafter, he made an application for grant of compassionate appointment on 07.01.2016 which remained pending till 30.07.2024 when the respondent no.4 forwarded the same to the Superintending Engineer at Gwalior. The claim of the appellant was thereafter declined vide impugned communication, dated 13.08.2024. Challenging this communication, the petition was filed which has been dismissed in limine by learned Single Judge.

8. Considering the challenge to the order, dated 13.08.2024, made in the writ petition, technically it can be said that writ petition was filed within reasonable time. However, the larger issue involved in the case is as to whether after lapse of 9 years, the appellant is entitled to the compassion by way of appointment. The learned Single Judge has considered number of authorities of the Apex Court in para - 8 of the impugned order and has concluded that because of inaction on the part of the appellant, the appointment on compassionate ground is not warranted. Thus, it is not the delay in filing the writ petition against the impugned communication which is relevant but it is the silence of more than nine years on the part of appellant, which disentitles him from getting the benefit of compassionate appointment.

9. The learned Single Judge has already referred to various authorities on this issue and the same are not required to be reiterated. However, the reference can be made to one authority in the case of State of *J & K &*

others vs. Sajad Ahmed Mir reported in (2006)5 SCC 766. The Apex Court in the said case held in para - 11 as under:

*"11. We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought 'compassion', the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. **This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution.**"*

10. Thus, the family of the deceased having survived for more than 9 years, it can easily be presumed that family is not in a penurious condition. While considering the application for grant of compassionate appointment, it has to be kept in mind that the appointment is being made departing the normal rules of recruitment. In other words, if a dependent is granted compassionate appointment, a meritorious candidate, who could be appointed after adopting process of recruitment, is deprived of such appointment. Therefore, a great care is required to be taken while considering the application for grant of compassionate appointment.

11. The counsel for the appellant has raised another issue in this appeal regarding entitlement of appellant for consideration under the policy which came into force subsequent to the date of death of his father. However, since, the appellant is held not entitled for the relief on the ground of lapse of more than 9 years, the issue is not required to be decided in this appeal.

12. Considering the facts stated above, we do not find any illegality in the order passed by learned Single Judge, thereby dismissing the writ petition. The impugned order dated 21.04.2025 passed in W.P.No.12707/2025 is accordingly upheld. The appeal is dismissed.

(MILIND RAMESH PHADKE)
JUDGE

(ASHISH SHROTI)
JUDGE

bj/-