

**THE HIGH COURT OF MADHYA PRADESH,  
INDORE BENCH  
DIVISION BENCH**

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**CORAM:**

**Hon'ble Shri Justice Prakash Shrivastava  
Hon'ble Shri Justice Vivek Rusia**

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**Writ Appeal No.601/2019**

**State of M.P. And Anr.**

**vs.**

**Sonu Jatav**

Shri Rahul Vijaywargiya, learned Counsel for the appellant/State.

Whether approved for reporting?	Yes
Law laid down	The circular dated 31.08.2016 is not a new policy, but a circular by which the existing policy dated 29.9.2014 has been amended. The other conditions of policy dated 29.09.2014 are intact and all are still in force till today despite issuance of circular dated 31.08.2016 . Clause 11.1 provides for payment of compensation of Rs.2,00,000/- in lieu of compassionate appointment for the dependents of deceased employee who died while working under the work charged & contingency establishment. Vide circular dated 31.08.2016, respondents have only omitted Clause 11.1 and provided a new clause by which the dependent of the deceased employee has been held entitled for compassionate appointment.
Significant paragraph Nos.	16

**O R D E R**

**03.05.2019**

**Per: Vivek Rusia, J:-**

1. Heard on I.A. No.1736/2019 an application for condonation of delay.
2. As per office objection, the appeal is barred by 269 days.
3. According to the appellant, against the impugned order dated 11.04.2018, Review Petition was filed which has been dismissed vide order dated 29.08.2018. Thereafter, legal opinion was sought from the Govt. Advocate which was received on 09.10.2018 and sent to the Law Department. Vide order dated 04.12.2018, the Law Department granted the permission to file writ appeal which was received by the OIC on 27.12.2018, thereafter, writ appeal was prepared and filed before this Court.
4. Considering the aforesaid procedure delay and contents of application as supported by an affidavit of Office-in-Charge of the Case , the delay in filing of this appeal is hereby condoned.
5. Also heard on the question of admission.
6. The appellant/State of Madhya Pradesh and others ( respondents in the writ petition) have filed the present appeal being aggrieved by order dated 11.04.2018 passed in WP No.1273/2017 whereby the writ petition was allowed by giving direction to the respondent to consider the claim of the petitioner for compensate appointment in view of the policy dated 31.08.2016.
7. The facts of the case in short are that father of the respondent (hereinafter referred to as the 'petitioner') was

appointed as linemen in Public Health Engineering Department, Ujjain in the year 1985. Vide order dated 24.06.2013, he was given appointment in contingency establishment. While working in the department, he died on 04.07.2016. The petitioner, being one of the dependent, filed a representation for grant of compassionate appointment to him. By order dated 25.10.2016, the respondent has rejected his claim on the ground that in the policy dated 31.08.2016, the dependent of deceased employee died while working in the work charge and contingency establishment have been held entitle for compassionate appointment w.e.f. 31.08.2016 since his father i.e. Punamchand Jatav died on 04.07.2016, therefore, he is not entitle for compassionate appointment.

8. Being aggrieved by the aforesaid order, the petitioner filed writ petition before this Court. The petitioner/respondent filed detailed reply in the writ petition by submitting that the claim of the petitioner was rightly considered in view of the policy dated 29.09.2014 which was in vogue at the time of death of his father in which there is no provision for grant of compassionate appointment to the dependent of deceased employee worked in the work charged & contingency establishment. The policy dated 31.08.2016 is prospective in nature, hence, the respondents have rightly rejected his claim.

9. In support of his contention, the respondents have placed reliance on the judgement passed in the case of **Canara Bank and Anr. vs. M. Mahesh Kumar reported in 2015 (7) SCC 417.**

**10.** By order dated 11.04.2018, the writ Court has allowed the writ petition by placing reliance over the judgment passed by the Co-ordinate bench of this Court in the Case of **Dilip More vs. State of M.P. And Anr. Passed in WP No.2692/2017** decided on **21.03.2018** and directed the respondents to consider the case of the petitioner in view of the policy dated 31.08.2016 and will not reject on the ground that his father was the employee of work charge contingency paid establishment.

**11.** Being aggrieved by the aforesaid order, the respondents have preferred this appeal before this court.

**12.** We have heard the learned government advocate appearing for the appellants and also perused the record.

**13.** The main contention of the learned counsel for the appellants/ State is that the case of the petitioner has rightly been considered in view of the policy dated 31.08.2016 in which first time the dependents of employee who died while working in the work charge & contingency establishment has been held entitle for the compassionate appointment and under the policy dated 29.09.2014 they were entitled only for the ex-gratia amount of compensation in lieu of compassionate appointment. Since father of the petitioner died on 04.07.2016 i.e. prior to the policy dated 31.08.2016 came into force, the respondents have rejected his claim.

**14.** We are not agreeing to the above submission because the General Administration Department of State of M.P. came up with a comprehensive policy dated 29.09.2014 for grant of compassionate appointment to one of the dependent of

deceased government employee by superseding all earlier policies issued time to time . Clause 11.1 provides that on account of death of employee working in work charge and contingency establishment and daily wager during service, the one of the dependent of the family member will be entitled for one time compensation of Rs.2,00,000/- . By Circular dated 31.08.2016, the General Administration Department of State Government has only amended the aforesaid clause 11.1 and directed that one of the dependent of deceased of contingency paid employee shall be entitled for compassionate appointment.

**15.** The core question for consideration before us is that whether the circular dated 31.08.2016 can be termed as a new policy of compassionate appointment or not? The State Government framed the new policy for compassionate appointment dated 29.09.2014 but by circular dated 31.08.2016 and only one Clause 11.1 has been amended, which reads as under:-

“11.1 कार्यभारिता/आकस्मिकता निधि से वेतन पाने वाले एवं दैनिक वेतनभोगी कर्मचारियों के दिवंगत होने पर अनुकंपा नियुक्ति की पात्रता नहीं होगी परन्तु उनके परिवार के आश्रित नामांकित सदस्य को एकमुश्त रूपये 2.00 लाख (रूपये दो लाख) की राशि अनुकंपा अनुदान के नाम से दी जाएगी। उसमें ग्रेज्यूटी की राशि सम्मिलित नहीं होगी। इस राशि का भुगतान संबंधित के कार्यभारित/आकस्मिकता के मद के अंतर्गत वेतन मद से किया जावेगा।”

**16.** The circular dated 31.08.2016 is not a new policy, but a circular by which the existing policy dated 29.9.2014 has been amended. The other conditions of policy dated 29.09.2014 are intact and all are still in force till today despite issuance of circular dated 31.08.2016 . Clause 11.1

provides for payment of compensation of Rs.2,00,000/- in lieu of compassionate appointment for the dependents of deceased employee who died while working under the work charged & contingency establishment. Vide circular dated 31.08.2016, respondents have only omitted Clause 11.1 and provided a new clause by which the dependent of the deceased employee has been held entitled for compassionate appointment subject to fulfilment of other condition of the policy dated 29.09.2014.

**17.** Hence it would be detrimental in the interest of dependents if it is held that new policy dated 31.08.2016 has come into force in which the dependent of the deceased employee working under the work charged and contingency establishment is not entitled for compassionate appointment.

**18.** Therefore, in the case of the petitioner, the policy dated 29.09.2014 as amended by circular dated 31.08.2016 ought to have been applied, which was in vogue at the time of death of his father on 04.07.2016 and also at the time of consideration. Therefore, in view of the above, we do not find any ground to interfere with the impugned order. The appeal is accordingly **dismissed**.

**(Prakash Shrivastava)**  
**Judge**

**(Vivek Rusia)**  
**Judge**

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