

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

**HON'BLE SHRI JUSTICE PRANAY VERMA**

**ON THE 26<sup>th</sup> OF FEBRUARY, 2022**

**WRIT PETITION No. 10144 of 2019**

**Between:-**

**ABHISHEK WANKHADE S/O LATE SHRI JITENDRA WANKHADE,  
AGED ABOUT 21 YEARS,  
R/O SAWANTPUR COLONY BADWANI,  
DISTRICT BARWANI, (MADHYA PRADESH)**

**.....PETITIONER**

**(BY SHRI AMIT RAJ, ADVOCATE)**

**AND**

**TRIBAL WORK (WELFARE) DEPARTMENT**

**1. PRINCIPAL SECRETARY, VALLABH BHAWAN,  
BHOPAL (MADHYA PRADESH)**

**ASSTT. COMMISSIONER,**

**2. TRIBAL WORK DEVELOPMENT DEPARTMENT,  
DHAR (MADHYA PRADESH)**

**3. PRINCIPAL GOVT. HIGH SCHOOL SINGHANA SINGHANA,  
TEHSIL MANAWAR, DISTRICT-DHAR (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI VALMIK SAKARGAYEN, GOVT. ADVOCATE)**

*This petition coming on for admission this day, the Court passed the following:*

**ORDER**

Heard.

By this petition preferred under Article 226 of the Constitution of India, the petitioner has challenged the order dated 05.02.2019 (Annexure P/1) passed by respondent No.2, whereby his application for appointment on compassionate basis has been rejected.

02. Undisputed facts of the case are that father of the petitioner Late Shri Jitendra Wankhade was working on the post of Assistant Teacher under

the respondents and was posted at respondent No.3, School. He died in harness on 12.07.2013. At that time, petitioner was a minor his date of birth being 28.08.1997.

03. On 21.01.2017, the petitioner made an application for his appointment on compassionate basis in term of the policy dated 29.09.2008 of the respondents in that regard. The said application has been rejected by the impugned order by observing that the same has been made after a period of one year from the date when petitioner has attained majority hence as per Clause 3.2 of the policy, the same has been preferred after expiry of the prescribed period hence petitioner does not have any right for being considered for appointment on compassionate basis.

04. The learned counsel for the petitioner submits that rejection of application of the petitioner is upon a misconstruction of Clause 3.2 of the Policy dated 29.09.2008 which provides that an application for appointment on compassionate basis can be made up to a period of seven years from the date of death of the employee. The application having been made within the said period was very much within time hence its rejection is illegal.

05. The learned Government Advocate for the respondent/State submits that as per Clause 3.2 of the Policy, the application ought to have been made by the petitioner within a period of one year from the date of his attaining majority and the same having been made after expiry of the said period has rightly been rejected. It is further submitted that construction of Clause 3.2 of the Policy as is being made by the petitioner is incorrect.

06. I have heard learned counsel for the parties and have perused the record.

07. Clause 3.2 of the Policy dated 29.09.2008 is as under :

3.2 सभी प्रकार के अनुकंपा नियुक्ति के प्रकरणों में शासकीय सेवक की मृत्यु दिनांक से 07 (सात) वर्ष तक पद उपलब्ध होने पर ही उसके आश्रित को अनुकंपा नियुक्ति की पात्रता होगी: परन्तु मृत शासकीय सेवक की यदि प्रथम संतान मृत्यु की तिथि को अवयस्क होवे तो केवल ऐसी प्रथम संतान को वयस्क होने की तिथि से एक वर्ष तक अनुकंपा नियुक्ति अन्यथा पात्र होने की दशा में प्रदान की जा सकेगी।

08. As per the aforesaid Clause, upon death of a Government Servant in harness application for appointment on compassionate basis can be made within a period of seven years from the date of his death. It is further provided that in case the first child of the employee is minor on the date of his death, then the application can be made by such child within a period of one year from the date of him attaining majority. Thus, the main provision provides for making of the application within a period of seven years from the date of death of the employee. The explanation appended to the Clause is in fact in the nature of a proviso and contemplates a situation where after death of the employee, even after completion of a period of seven years therefrom if his first child is still a minor, then from the date of him attaining majority, he can make the application within a period of one year.

09. The contention of the respondents that application has to be made by the minor child within a period of one year from the date of him attaining majority irrespective of the fact whether the period of seven years from the date of death of the employee has expired or not, in my opinion, is not correct and would defeat the very reason for which the clause in question has been incorporated in the policy. It would also run contrary to the basic intention of formulation of policy of appointment on compassionate basis.

10. Thus, in my opinion, the only interpretation of the Clause would be that application for appointment on compassionate basis can be made within a period of seven years from the date of death of the Government servant and, in case, even after expiry of the period of seven years, the first child of the Government servant is still minor, then he can make such an application within a period of one year from the date of attaining majority.

11. In the present case, father of the petitioner had died on 12.07.2013 and application for appointment on compassionate basis was made on 21.07.2017 i.e. well within the period of seven years as provided for under the policy. Rejection of application of the petitioner on the ground of the same having been made beyond the period of one year from the date of him having attained majority is hence erroneous.

12. Consequently, the impugned order dated 05.02.2019 (Annexure P/1) is quashed. The matter is remitted back to respondent No.2 to consider and decide the application of the petitioner for appointment on compassionate basis on merits in accordance with the applicable policy. The entire exercise be completed within a period of four months from the date of receipt of certified copy of this order.

13. The petition is allowed and disposed off as aforesaid. No costs.

**(PRANAY VERMA)**  
**JUDGE**

jyoti