

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

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 23rd of NOVEMBER, 2023

WRIT PETITION No. 19739 of 2019

BETWEEN:-

**MANOJ GURJAR S/O LATE SHRI CHAMPA LAL GURJAR,
AGED ABOUT 30 YEARS, OCCUPATION: UNEMPLOYED
V-39, SILICON CITY, RAJENDRA NAGAR, AB ROAD,
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ANIRUDH SAXENA, LEARNED COUNSEL)

AND

- 1. STATE OF M.P. THROUGH DEPARTMENT OF
TECHNICAL EDUCATION AND SKILL
DEVELOPMENT MANTRALAYA PRINCIPAL
SECRETARY VALLABH BHAWAN, BHOPAL
(MADHYA PRADESH)**
- 2. THE DIRECTOR DIRECTORATE OF TECHNICAL
EDUCATION SATPUDA BHAWAN, BHOPAL
(MADHYA PRADESH)**
- 3. THE OFFICE OF PRINCIPAL GOVERNMENT
WOMAN POLYTECHNIC COLLEGE (AN
AUTONOMOUS BODY) RAJENDRA NAGAR,
INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI BHUWAN DESHMUKH, LEARNED GOVT. ADVOCATE)

*This petition coming on for orders this day, the court passed the
following:*

ORDER

The present petition is filed under Article 226 of the Constitution of India challenging the order dated 01.12.2018 and 28/01/2019 (Annexure P/1 & P/2) by which the respondent No.3 has rejected the claim of the petitioner for grant

of compassionate appointment on account of death of the father, who died in harness on 15.09.2015.

2 . This is second visit of the petitioner before this Court. Earlier the petitioner filed petition WP No.5230/2016(s) challenging the orders dated 04/01/2016 & 11/1/2016 by which the respondents have rejected the claim for compassionate appointment and awarded Rs.2 lac as a compensation in lieu of the appointment.

3. The facts of the case are that father of the petitioner was working as a Peon as a contingency establishment. He died on 15.09.2015. He was appointed as a Peon under the permanent employment as daily wager employee. Thereafter his services were regularised on 28.02.2009. The petitioner submitted an application for compassionate appointment on 07.01.2016. The same was rejected on the ground that there is no provision for compassionate appointment to an employee of work charged & contingency establishment. The dependents of such employee are entitled for compensation in lieu of compassionate appointment. The petitioner placed reliance on a Circular dated 31.08.2016 whereby the earlier policy dated 29.09.2014 was amended and a provision was incorporated providing compassionate appointment to a dependent of work charge and contingency paid employee. After consideration of the said Circular, the said petition was disposed off by Coordinate Bench on the following terms:-

[6] Now, the State Government has taken decision that the dependents of the contingency paid employee are also entitled for compassionate appointment. Therefore, the matter is remanded back to the respondent/s to decide afresh in light of the circular dated 31st August, 2016. It is made clear that this circular dated 31/08/2016 nowhere says that it is prospective. It is applicable to all the pending cases. The entire exercise be concluded within a period of 60 days from the date of

production of certified copy of this order by the respondent/s.

[7] Present writ petition stands disposed of accordingly.

4. By the impugned orders, the claim of the petitioner for compassionate appointment has been rejected on the ground that on the date of death of the employee, the policy dated 31.08.2016 was not existing and the case of the petitioner would be governed by Circular dated 29.09.2014. It is stated that the provisions of Circular dated 31.08.2016 is prospective in nature.

5. Counsel for the petitioner submitted that the Division Bench of this Court in *Writ Appeal No.601/2019 (State of MP & Anr. vs. Sonu Jatav)* has considered the Circulars dated 29.09.2014 and 31.08.2016 and held that the Circular dated 31.08.2016 is not a new policy and has amended only existing policy dated 29.09.2014. The other conditions of the policy dated 29.09.2014 are intact and all are still in force till today despite issuance of Circular dated 31.08.2016. The new Clause provides for compassionate appointment to the dependent of deceased employee of work charged and contingency paid employee. He submits that in the light of the said judgment by Division Bench in the case of *Sonu Jatav* (supra), the subsequent Circular dated 31.08.2016 is nothing but continuation of old Circular dated 29.09.2014 and both the circulars would be applicable on the date of death of his father i.e. 15.09.2015 and application for compassionate appointment has to be considered in the light of both circulars.

6. Per contra, counsel for the State supported the impugned order and relied on an order passed by Division Bench dated 19.06.2019 (*Harish vs. Public Health Engineering Department*) where the Division Bench considered both the circulars dated 29.09.2014 and 31.08.2016 and held that the Circular dated 31.08.2016 is prospective in nature and the same would not

apply to the cases for compassionate appointment prior to the said circular. It is also argued that General Administration Department of the State Government vide circular dated 21.03.20174 clarified that the Circular dated 31.08.2016 would be applicable from 31.08.2016, however, copy of the said circular is not on record. The same is mentioned in the impugned order.

7 . It is also relevant to mention here that the said circular was not brought to the notice of the Division Bench either in the case of ***Sonu Jatav*** (supra) or ***Harish*** (supra) decided by the Division Bench. The case of ***Sonu Jatav*** (supra) has been decided by Division Bench on 03.05.2019, whereas the case of ***Harish*** (supra) was decided by Division Bench on 19.06.2019, but in the subsequent judgment of ***Harish*** (supra), the judgment passed in the case of ***Sonu Jatav*** (supra) by Division Bench earlier has not been considered. As per the judgment passed by the Full Bench in the case of ***Jabalpur Bus Operator vs. State of M.P. 2003(1) MPHT 226***, if there are two different views of co-equal Bench and in the later judgment, the earlier judgment has not been considered, the previous judgment will hold the field. In the light of the judgment passed by the Full Bench in the case of ***Jabalpur Bus Operator*** (supra), the law laid down in the case of ***Harish*** (supra) would be per *incuriam* and the previous judgment will hold the field.

8. In view of the judgment passed by the Division Bench in the case of ***Sonu Jatav*** (supra), it is held that the circular dated 31.08.2016 has to be read with circular dated 29.09.2014 as continuation of the previous circular and the circular dated 31.08.2016 shall be deemed to be effective on the date of death of the employee. The Apex Court in the case of ***State of M.P. vs. Ashish Awasthi (2022) 2 SCC 157*** held that the policy existing at the time of the death of deceased employee shall be applicable for consideration of application for

compassionate appointment.

9 . In the light of the above discussions and enunciation of law, the impugned order dated 01.12.2018 is quashed. The respondent No.3 is directed to decide the case of the petitioner afresh for compassionate appointment in the light of the circular dated 31.08.2016 within a period of three months from the date of filing of copy of the order.

10. With the aforesaid, the petition is **allowed and disposed off**.

soumya

(VIJAY KUMAR SHUKLA)
JUDGE

