

THE HIGH COURT OF MADHYA PRADESH

Case Number	W.A. NO.10/2020
Parties Name	Managing Director, Madhya Pradesh Paschim Kshetra Vidyut Vitaran Co. & Ors. Vs. Ashiq Shah & another
Date of Judgment	07.06.2021
Bench	<u>Division Bench:</u> Hon'ble The Chief Justice Justice Sujoy Paul
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsel for parties	Shri.Madhusudan Dwivedi, learned counsel for appellant. Shri. L.C. Patne, learned counsel for respondent No.1.
Law laid down	<p>The compassionate appointment -- Object and purpose - To provide immediate helping hand to the family in distress to enable it to overcome sudden economic crisis because of death of bread winner. Request of compassionate appointment and direction thereupon should be reasonable and proximate to the time of death of the bread winner.</p> <p>No reservation of vacancy till petitioner becomes major after couple of years -- There cannot be reservation of a vacancy till such time petitioner becomes major after number of years.</p> <p>Delay in issuing the direction for consideration for compassionate appointment -- No directions could be passed after couple of years (24 years in this case) in favour of claimant whose father died in the year 1996.</p> <p>The order of writ Court directing consideration of compassionate appointment after 24 years is set aside.</p>
Significant paragraph numbers	6,7,8,9,10

THE HIGH COURT OF MADHYA PRADESH
WRIT APPEAL NO.10/2020

Managing Director, Madhya Pradesh Paschim Kshetra Vidyut Vitaran
Company & Ors.

Vs.

Ashiq Shah & another

Indore, Dated:07.06.2021

Heard through video conferencing.

Shri. Madhusudan Dwivedi, learned counsel for appellant.

Shri L.C. Patne, learned counsel for respondent No.1.

With the consent, finally heard.

ORDER

In this *intra* Court Appeal filed under Section 2(1) of the Madhya Pradesh Uchha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005, the appellant/department has challenged the order of writ court dated 30/9/2019 passed in WP No.6510/2015 whereby the Court has set aside the impugned order dated 23/5/2016 whereby claim of respondent No.1 for compassionate appointment was rejected. In turn, department was directed to consider the case of respondent No.1 and pass necessary orders within three months. The department was prevented to reject the claim of the respondent No.1 on the ground of delay.

[2] Shri Dwivedi, learned counsel for appellant submits that father of respondent No.1 died on 16/6/1996. Merely, because the respondent No.1 was minor at the time of death, his claim application cannot be considered and he cannot be appointed after more than two decades from the date of death of his father. This will defeat the very purpose of grant of compassionate appointment. In support of his contentions he has placed reliance upon the judgment of Apex Court in the matter of *Sanjay Kumar Vs. State of Bihar & Ors.* dated 28/8/2000 passed in *SLP (Civil) No.12876/2000* and orders of this Court in the matter of *Sanjay Shriwas Vs. C.M.D & another* dated 13/2/2017 passed in *WP No.5386/2015*, *Sanjay Shriwas Vs. C.M.D. & another* dated 23/10/2017 passed in *WA No.270/2017*, *Amit Kumar Vs. C.M.D, M.P. P.K.V.V.Co.*

Ltd. & another dated 11/1/2019 passed in WA No.136/2018 and *Hitesh Bharti Vs. State of M.P. & Ors.* dated 18/1/2021 passed in *WP No.13899/2020*.

[3] *Per contra*, Shri L.C. Patne supported the impugned order on the basis of the policy.

[4] No other point is advanced by learned counsel for parties.

[5] We have heard the learned counsel for parties at length and perused the record.

[6] This is trite that compassionate appointment is carved out as exception to the general rule. The two well recognized contingencies for grant of compassionate appointment are – (i) appointment on compassionate ground to meet the *sudden crisis* occurring in a family on account of death of the bread winner while in service; (ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the bread winner. (See *(2008) 13 SCC 730 V. Sivamurthy Vs. State of U.P.*).

[7] Reference may be made to *(1998) 2 SCC 412 (State of U.P. Vs. Paras Nath)* wherein after taking note of previous judgment reported in *(1995) 6 SCC 476 (Union of India Vs. Bhagwansingh)*, the Apex Court opined as under:-

State of U.P. vs. Paras Nath (1998) 2 SCC 412

“6. We may, in this connection, refer to only one judgment of this Court in the case of *Union of India v. Bhagwan Singh [(1995) 6 SCC 476: 1996 SCC (L&S) 33: (1995) 31 ATC 736]*. In this case, the application for appointment on similar compassionate grounds was made twenty years after the railway servant's death. This Court observed:

“The reason for making compassionate appointment, which is exceptional, **is to provide immediate financial assistance to the family** of a government servant who dies in harness, when there is no other earning member in the family.”

7. No such considerations would normally operate seventeen years after the death of the government

servant. The High Court was, therefore, not right in granting any relief to the respondents.”

(emphasis supplied)

[8] Similarly, in the case of *Santosh Kumar Dubey Vs. State of U.P. (2009) 6 SCC 481*, the Apex Court poignantly held as under:-

Santosh Kumar Dubey v. State of U.P., (2009) 6 SCC 481

“12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in government service.”

(emphasis supplied)

[9] It is trite that the basic purpose of compassionate appointment is to provide immediate helping hand to the family in distress. The appointment cannot be directed to be given after more than two decades. There cannot be a reservation of vacancy till a candidate becomes major after number of years. In *(2000) 7 SCC 192 (Sanjay Kumar Vs. State of Bihar & Ors.)*, the Apex Court opined as under:-

“3... This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in *Director of Education Vs. Pushpendra Kumar*. It is also significant to notice that on the date when the first application was made by the petitioner on 02/06/1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as a petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.”

(emphasis supplied)

A Division Bench of this Court took same view in *2003(1) MPLJ 342 [Beni Lal Bamney Vs. Union of India and others]* and *2005(4) MPLJ 575 (Riazuddin Khan Vs. State of M.P. and others)*.

[10] By passing the impugned order, the learned Single Judge has directed consideration of respondent No.1 on compassionate ground after almost 24 years from the date of death of father of respondent No.1. In view of principles laid down in the aforesaid judgments, we are unable to countenance the order of learned writ court. No directions could have been issued for consideration on compassionate ground after almost 24 years from the date of death of father of respondent No.1. The very purpose of grant of compassionate appointment will be defeated if claims of compassionate appointment after decades are entertained.

[11] Considering the aforesaid, the impugned order of writ court dated 30/9/2019 is set aside. Writ appeal is **allowed**.

(MOHAMMAD RAFIQ)
CHIEF JUSTICE

(SUJOY PAUL)
JUDGE

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