

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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 31st OF OCTOBER, 2023

WRIT PETITION No. 790 of 2023

BETWEEN:-

REKHA W/O LATE SHRI RODSINGH
KACHHAWA, AGED ABOUT 48 YEARS,
1. OCCUPATION: HOUSE WIFE EWS 358
MUKHARJEE NAGAR, DISTRICT DEWAS
(MADHYA PRADESH)

KU. BHANU D/O LATE SHRI RODSINGH
KACHHAWA, AGED ABOUT 32 YEARS,
2. OCCUPATION: NOTHING EWS-358,
MUKHARJEE NAGAR DEWAS (MADHYA
PRADESH)

.....PETITIONERS

(BY SHRI NEELESH AGRAWAL, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH
1. THROUGH COLLECTOR DISTRICT UJJAIN
(MADHYA PRADESH)

MUNICIPAL CORPORATION UJJAIN
2. THROUGH COMMISSIONER (MADHYA
PRADESH)

.....RESPONDENTS

***(SHRI RISHI TIWARI, ADVOCATE FOR THE RESPONDENT NO.2 AND SHRI
A. S. PARIHAR, G.A. FOR THE STATE)***

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

ORDER (Oral)

1] This writ petition has been filed by the petitioners under Article 226 of the Constitution of India seeking the following reliefs:-

- (a) That, this Hon'ble Court may kindly be pleased to quash the dismissal order No.2933 dated 10/10/2017 (Annx.P/7) regarding the dismissal of late Rodsingh Kachhawa, in view of his clear acquittal in the Criminal Case by the order passed by this Hon'ble Court in CRA No.1799/2017 (Annx.P/5). (b) This Hon'ble Court may kindly be pleased to Quash/set aside Impugned Order (Annx.P/1) dated 18.10.2022 bearing no.2022/1306 by which Application for grant of service benefits and Comassionate Appointment was dismissed.
- (c) This Hon'ble Court may further be pleased to issue a Writ of Mandamus or any other suitable writ, directing the respondents to disburse the amount of gratuity and other pending service benefits of late Mr. Rodsingh, and to consider the claim of the Petitioner no.2 Bhanu Kachhawa for appointment on a suitable post under the scheme of Compassionate Appointment.
- (d) That, this Hon'ble Court may be pleased to pass any other order as deems fit in the fact and circumstances of the case in the interest of justice.

2] The petitioner is also aggrieved of the order dated 18/10/2022, passed by the Additional Commissioner, Municipal Corporation, Ujjain whereby the petitioners' representation regarding compassionate appointment and retiral dues has been partly allowed, and although the retiral dues in respect of services of Rodsingh Kachhawa have been granted to the petitioners who are the wife and daughter of Rodsingh respectively, however their claim for compassionate appointment of petitioner No.2 has been rejected holding that compassionate appointment cannot be granted in terms of Clause 4.3 of circular dated 29/09/2014, as the deceased was

already terminated prior to his death.

3] The Petitioners' case is that Rodsingh was facing criminal trial under Section 7, 13(1)(D) and 13(2) of Prevention of Corruption Act, 1988, in which, he was also convicted by the trial Court in Special Case No.6/2015, vide judgment dated 26/09/2017, which was challenged by Rodsingh in Criminal Appeal No.1799/2017 before this Court, however, Rodsingh died on 02/01/2018 however, as the aforesaid criminal appeal was pursued by petitioner No.1 Rekha, the wife of Rodsingh Kachhawa after his death, the judgement in CRA No.1799/2017 was passed by this Court on 31/07/2020, whereby Rodsingh was acquitted of all the charges.

4] It is further the case of the petitioner that after the acquittal of Rodsingh, the petitioners were not granted any retiral dues and compassionate appointment, hence they also preferred Writ Petition No.18037/2021, which was decided by this Court vide order dated 04/04/2022, directing the respondents to decide the petitioners' representation. Subsequently, all the retiral dues were granted to the petitioners but the claim for compassionate appointment of petitioner No.2 was rejected.

5] Counsel for the petitioners has submitted that the contention of respondents that Rodsingh was already terminated prior to death on 10/10/2017 during his employment only, cannot be sustained as after the acquittal of Rodsingh, the effect of the acquittal would be that the order of termination would also not survive, as the order of termination of Rodsingh on the ground of his conviction would also

become bad in law after his acquittal in the criminal appeal. Thus, it is submitted that the impugned order be set aside, and the respondents may be directed to appoint petitioner No.2 on compassionate basis as petitioner No.1 is wholly dependent on petitioner No.2 who is her married daughter.

6] A reply to the aforesaid petition has also been filed by respondent No.2/ Municipal Corporation, Ujjain contenting that as Rodingh was already terminated on 10/10/2017 i.e., even prior to his death on 02/01/2018, thus the question of compassionate appointment would not arise. It is also submitted that since the acquittal of Rodingh on 21.07.2021 was also after more than 3 years of his death, the requirement of compassionate appointment which is for immediate relief to the family of the deceased would also not arise in the present case. In support of his submissions, counsel for respondent No.2 has also relied upon the decision rendered by Madras High Court in the case of *B.Manimaran vs. Managing Director and another* passed in W.P.(MD) No.8305/2021 dated 03/03/2022. Counsel has also relied upon the decision rendered by the Supreme Court in the case of *State of Haryana and others vs. Ankur Gupta reported as (2003) 7 SCC 704* para No.7 of which also prescribes that the compassionate appointment is granted to meet out the sudden crisis occurring in the family of such employee who has served the State and dies while in service. Thus, it is submitted that the petition may be dismissed.

7] Learned counsel appearing for the State has also opposed the prayer.

8] Heard. Having considered the rival submissions and on perusal of the documents filed on record, this Court finds that so far as the acquittal of husband of petitioner No.1 Rodsingh is concerned, the order has been passed by this Court in Criminal Appeal No.1799/2017 on 21/07/2021, whereas, Rodsingh has died on 02/01/2018. Admittedly the criminal appeal has been continued by petitioner No.1 who happens to be the wife of deceased Rodsingh under Section 394 of Cr.P.C. which provides that if a convict dies during the pendency of the appeal, in that case, any of his near relatives may also continue with the appeal within thirty days of the death of the appellant, and if leave is granted, the appeal shall not abate. In the considered opinion of this court, the aforesaid provision has been embedded in Cr.P.C. so that if the near relative of any person convicted of an offence is of the view that the convict has been wrongly so convicted and wants to clear his name from the aforesaid offence, he is entitled to take recourse of Section 394 of Cr.P.C. In such circumstances, when the appeal is finally allowed and the person convicted of an offence is finally acquitted, its effect has to be taken into consideration retrospectively for all the practical purposes. And, if he was in service, and was terminated only because of his conviction, in such circumstances, when the criminal appeal is allowed, and his conviction is set aside by an order of acquittal, its necessary corollary would be that his order of termination would also

have to be set aside and in turn, its effect would be that the termination order would not have been passed had it not been for the conviction of the employee. So far as the order of termination dated 10.10.2017 is concerned, the same reads as under:-

“विशेष न्यायालय (भ्रष्टाचार निवारण अधिनियम 1988) में प्रचलित विशेष आपराधिक प्रकरण क्रमांक 311/2013 एवं माननीय विशेष न्यायालय भ्रष्टाचार निवारण अधिनियम) उज्जैन के विशेष प्रकरण क्रमांक 06/2015 में दिनांक 26/09/2017 को पारित आदेश से श्री रोड़सिंह पुत्र जस्सासिंह कछावा निलंबित सहायक वर्ग-3 (विधि विभाग) नगर पालिक निगम उज्जैन को भ्रष्टाचार निवारण अधिनियम की धारा 7 तथा धारा 13(1)(डी) सहपठित धारा 13(2) के अंतर्गत दोषी पाते हुए क्रमशः चार-चार वर्ष के सश्रम कारावास तथा दो-दो हजार के अर्थदण्ड से दण्डित किया गया है।

अतः एवद् द्वारा म.प्र. सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम 1966 के नियम 10(नौ) के अन्तर्गत श्री रोड़सिंह पुत्र जस्सासिंह कछावा निलंबित सहायक वर्ग-3 नगर पालिक निगम उज्जैन को तत्काल सेवा से पदच्युत (डिसमिस) किया जाता है।”

9] In such circumstances, when the order of termination dated 10.10.2017 was solely based on the ground of his conviction, the same cannot be sustained in the eyes of law and is hereby quashed.

10] So far as the impugned order dated 18/10/2022 is concerned, the same refers to Clause 4.3 of circular dated 29/09/2014, which (circular) provides as under:-

“4. अनुकंपा नियुक्ति के लिए अपात्रता

निम्नलिखित स्थिति में अनुकंपा नियुक्ति की पात्रता नहीं होगी:-

4.1 x x x x x x

4.2 x x x x x x

4.3 ऐसे दिवंगत व्यक्ति जो केन्द्र शासन या राज्य सरकार या उसके स्वत्वाधीन/नियंत्रणाधीन किसी निगम/मण्डल/आयोग द्वारा पदच्युत व्यक्ति हो।”

11] In the considered opinion of this Court, when the order of termination itself is held to be bad in law, the aforesaid provision cannot be brought into service after acquittal of Rodsingh in the criminal case and the claim of the petitioners cannot be denied only on the ground that the service of deceased Rodsingh was already terminated when the petitioners applied for compassionate appointment.

12] It is also found that in the impugned order dated 18/10/2022, the respondents have not denied the claim of the petitioners on the ground that no immediate need survives to grant the compassionate appointment, but this ground has been taken by them in their reply. In the considered opinion of this court the respondent cannot supplement the impugned order and add another ground into it for rejecting the claim of the petitioners in their reply to the writ petition. Otherwise also, so far as the decision relied upon by counsel for respondent No.2 in the case of *Ankur Gupta (supra)* is concerned, para 7 of the same reads as under:-

“7. As was observed in *State of Haryana and Ors. v. Rani Devi & Anr.* (JT 1996 (6) SCC 646), it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.”

13] In the considered opinion of this Court, the facts are distinguishable as in the present case, petitioner No.1 happens to be the widow of deceased whereas, petitioner No.2 is daughter of the deceased and it cannot be expected that the needs of petitioner No.1, who herself is unemployed and dependent upon petitioner No.2/his daughter who is also unemployed, would cease to exist even after 4-5 years of death of Rodingh. In such circumstances, the aforesaid decision of *Ankur Gupta (supra)* is of no help to respondent No.2.

14] So far as the decision rendered by the Madras High Court in the case of *B.Manimaran (supra)*, relied upon by counsel for respondent No.2 is concerned, with due respect to the learned Judge of the Madras High Court, this Court does not agree with the finding recorded therein, in which it is held that the scheme of compassionate appointment cannot be extended with reference to the date of death of the employee and the subsequent order passed in writ petition setting aside the order of dismissal from service would entail the legal heirs of the deceased employee to get terminal benefits and not the concessional scheme of compassionate appointment in view of the fact that on the date of death of the employee, he was not in service and he was a dismissed employee. As this Court has already held that the acquittal of the employee from the conviction would have the effect as if there was no conviction, and in turn, the order of termination passed on the basis of conviction can also be said to be non-existent. In other words, had there not been any conviction, there would also not have been any termination. Thus, the aforesaid

decision is also of no avail to respondent No.2.

15] Resultantly, the writ petition stands *allowed*. The impugned order of termination of Rodsingh dated 10/10/2017, and order dated 18.10.2022 rejecting the application for compassionate appointment are hereby set aside and the respondents are directed to give appointment to petitioner No.2 Ku. Bhanu Kachhawa as per the scheme of compassionate appointment. The aforesaid exercise be completed by the respondents within a period of six weeks from the date of receipt of certified copy of this order.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

krjoshi