

**HIGH COURT OF JUDICATURE AT JABALPUR (M.P.)****SINGLE BENCH : HON'BLE JUSTICE NANDITA DUBEY****WRIT PETITION NO.13293/2017**

Sandeep Vastri

Vs.

State of M.P. and others

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Smt. Sushma Pandey, learned counsel for the petitioner.

Shri Amit Sharma, Govt. Advocate for the respondent/State.

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Whether approved for reporting : **Yes**

Law laid down

Significant paragraph numbers : **11, 14, 15 & 17.**

**ORDER****(27.06.2018)**

This petition is preferred under Article 226 of the Constitution of India, challenging the orders dated 14.06.2017 and 28.07.2017, whereby by the petitioner's claim for compassionate appointment has been rejected.

2. Petitioner's case is that his father died in harness on 15.12.2010, while working as Pramukh Prahari in the service of respondent No.5. He submitted his application on 28.02.2011 alongwith his testimonials

for appointment on compassionate ground. The claim of petitioner was declined by communication dated 15.09.2011 (Annexure P-5) on the ground that he was only Class V pass, whereas the minimum qualification for appointment on Class IV post, on compassionate ground was Class VIII pass.

**3.** The mother of the petitioner thereafter preferred a representation before the higher authorities for reconsideration of petitioner's case claiming that his son has now obtained the minimum educational qualification for compassionate appointment. She also submitted the copy of the mark sheet of Class VIII of his son. The mark sheet submitted by her on verification from the DEO, Seoni, was not found authentic, resultantly, the claim of the petitioner was again rejected on 31.01.2012 and he was informed accordingly. As per the directions of respondent No.3, Joint Director, Women and Child Development and in view of Clause 10.6 of the prevailing policy, the claim of the petitioner was settled and closed by paying a lump sum amount of Rs.1 lakh, in lieu of compassionate appointment to mother of petitioner as nominee of the deceased.

4. After the second rejection, petitioner again submitted an application on 24.04.2012, stating the same fact that he has obtained the requisite qualification, hence his claim may be reconsidered. Alongwith his application, he again submitted the copy of the Class VIII mark sheet. The claim of the petitioner was again rejected vide intimation dated 16.05.2012 on the ground that the petitioner's case has already considered, settled and closed vide order dated 31.01.2012 and in absence of any provision for review or reconsideration of a closed case, his application cannot be considered.

5. Aggrieved by the rejection of his application, petitioner filed a petition bearing W.P. No.18549/2015, which was disposed of on 08.04.2017 in the National Lok Adalat in the following terms. :-

*“The claim of the petitioner is with regard to grant of compassionate appointment.*

*It is found from para 5 of the return filed by the respondents that the petitioner was not found entitled for compassionate appointment on the ground that he was not having requisite educational qualification i.e. 8<sup>th</sup> class and the petitioner had only produced 5<sup>th</sup> class certificate.*

*Learned counsel for the petitioner submits that the petitioner has now obtained the requisite qualification.*

*Learned counsel for the respondent/State submits that if the petitioner submits a fresh representation*

*along with the necessary documents, the claim of the petitioner will be considered and decided in accordance with law.*

*Keeping in view the aforesaid and as agreed to by learned counsel for the parties, the present petition is disposed of with a direction that the petitioner shall submit a fresh representation along with the requisite certificates before the competent authority within a period of one month from today. On receiving such representation, the competent authority shall consider and decide the claim of the petitioner afresh in accordance with law within a period of two months thereafter.*

*It is needless to state that in case the representation of the petitioner is rejected, the petitioner will have liberty to challenge the said order in accordance with law, if so advice."*

**6.** In terms of the aforesaid order, petitioner submitted a fresh representation before the authorities, which was rejected vide impugned order dated 14.06.2017 on the ground that in view of clause 12.2 of the notification dated 29.09.2014, there is no provision for review or reconsideration of a settled and closed case.

**7.** Subsequent to this, petitioner again submitted a representation dated 29.06.2017, before Collector Seoni, who vide communication dated 28.07.2017, intimated him that vide letter dated 14.06.2017,

petitioner has already been informed and since there are no new facts, his case was closed.

**8.** The contention of learned counsel for the petitioner is that an application for grant of compassionate appointment has to be considered in accordance with the policy that was in existence when the application was submitted and cannot be rejected on the basis of a subsequent policy, which may have changed detrimental to the interest of the claimant after submission of his application. It is urged that in view of the specific direction to the respondents to consider the representation of the petitioner afresh on the basis of his subsequently acquired educational qualification, fulfilling the requisite educational qualification for appointment as per the policy prevailing at the time when the application was first made, the respondents could not have rejected his representation.

**9.** Shri Amit Sharma, learned Govt. Advocate argued that grant of compassionate appointment is not a vested right and is governed by policies and schemes formulated in this regard. It was urged that application for compassionate appointment has to be considered strictly in accordance with the policy that is in vogue at

the time of consideration and accordingly the petitioner's earlier application was considered and rejected in view of the policy in vogue at that time and as he did not have requisite qualification and mark-sheet filed earlier by him was not found authentic on verification, his claim was thereafter settled as per the provisions of notification No. C/3-4/1/3/06 dated 18.08.2008 by extending the benefit of Rs. 1 lakh vide order dated 28.01.2012. It is further argued that the petitioner's representation dated 30.04.2012, on the basis of his subsequently acquired educational qualification after the case was settled and closed, after making the payment in terms of clause 10.6 of the notification dated 18.08.2008 could not be reconsidered in absence of any provision in the policy in vogue at the relevant time. It is further contended that the limitation for filing the application for compassionate appointment is seven years and once the case is settled and closed after considering his representation, repeated representation filed by the petitioner will not revive the case or extend the limitation.

**10.** I have heard the learned counsel for the parties at length and perused the record.

**11.** The legal position with regard to grant of compassionate appointment is well settled. Compassionate appointment is neither a vested right nor is it a hereditary right, which can be exercised at any time or as many times. The purpose behind such appointment is to enable the distressed family to get over the sudden financial crises, which the family faces at the time of death of the sole bread winner and must be granted strictly in accordance with the scheme or policy formulated in this regard.

**12.** It is not in dispute that the petitioner did not possess the requisite educational qualification for appointment on compassionate ground when he first applied in the year 2011 and resultantly his claim was denied. His mother, thereafter preferred another representation alongwith copy of his mark sheet for reconsideration of his case, claiming that petitioner had now obtained the requisite qualification. The authorities reconsidered the case of the petitioner but found the mark sheet not authentic after verification by DEO, hence his claim was rejected for the second time. Thereafter on the advise and direction of respondent No.3, Joint Director, Women and Child Development Department, a

decision was taken on 28.01.2012 to settle the claim as per clause 10.6 of the notification dated 18.08.2008 and the benefit of compassionate grant of Rs. 1 lakh in lieu of the compassionate appointment was extended to the nominee, i.e., mother of petitioner and the case was accordingly closed.

Clause 10.6 of the notification reads as under :-

“10.6 जिन प्रकरणों में आवेदकों की पात्रता केवल चतुर्थ श्रेणी की है उनमें इस श्रेणी के पद उपलब्ध न होने पर अथवा चतुर्थ श्रेणी की भी योग्यता नहीं होने पर उन्हें अनुकंपा नियुक्ति के बदले एकमुश्त एक लाख रूपये की राशि संबंधित विभाग कार्यालय द्वारा प्रदान की जाकर अनुकंपा नियुक्ति का प्रकरण निराकृत माना जायगा यह राशि संबंधित विभाग/कार्यालय द्वारा वेतन मद से आहरित की जावेगी।”

**13.** It is apparent from the record that the order dated 08.04.2017, passed in W.P. No. 18549/2014 for consideration of petitioner's case for compassionate appointment as he had subsequently obtained requisite qualification was obtained by suppressing/not disclosing the fact that twice his application has already been considered and rejected and the claim of the petitioner after payment of Rs. 1 lakh, in lieu of compassionate appointment has already been settled and closed.



**14.** The question, whether a claim for appointment on compassionate ground should be evaluated in accordance with the policy that was prevailing when the application is submitted seeking such appointment or as per the policy prevailing at the time of consideration of the application, has been considered and the reference has been answered by the Full Bench of this Court in the case of **Bank Of Maharashtra and another Vs. Manoj Kumar Deharia and another** reported in **2010(3) MPLJ 213**, wherein para 33, the Court has held :-

"33. In view of the foregoing discussion, we proceed to record our conclusions as follows:

*(a) The grant of compassionate appointment is not a vested legal right. It is only a benefit granted in certain circumstances de-hors the normal rule of appointment and when the employer has a right to evolve an appropriate policy after considering various factors for granting such a benefit, the considerations have to be made in accordance with the policy that is prevailing at that point of time.*

*(b) When it is held that compassionate appointment is not a vested right and when grant of such appointment is governed by the Rules and Policies prevailing in an establishment, then consideration as per the Rules existing is required to be made and consideration on the basis of a Policy, which is given up by the employer and which has no application at that point of time cannot be insisted upon.*

*(c) Having regard to the exceptional nature of this appointment and taking note of the fact that it is granted under a special Scheme carved out de-hors the normal mode of recruitment, the same has to be governed as per the Policies or Provisions governing such appointment prevalent at a particular point of time when consideration is to be made, and not on the basis of a Policy which was in vogue and has been given up by the employer due to changed circumstances.*

*(d) As compassionate appointment is granted by carving out a special Scheme contrary to the normal mode of recruitment and when the employer or the government is at liberty to evolve a Scheme for granting such appointment from time to time, then the consideration for appointment has to be made in accordance with the Scheme or Policy that is in existence.*

*(e) The decisions rendered in T. Swamy Dass (supra) and Heeralal Baria (supra) do not lay down the correct law and are hereby overruled.*

*(f) Any right flowing from a settlement between the employer and employees' union or association has to be in a different compartment.*

*(g) It would be the obligation of the employer to deal with the application with immediacy and promptitude so that the grievance of a family in distress gets a fair treatment in accordance with law. "*

**15.** It is apparent from the record that the petitioner acquired the requisite qualification after his claim was already settled and closed. The idea behind the scheme of compassionate appointment is not to

provide for endless compassion but to see that the family of the deceased employee who died in harness does not become a destitute and once the right is availed any further or second consideration on the ground of compassion would not arise. Hence, once the application of the petitioner has been considered strictly in accordance with the terms and conditions of the policy of 2008, in vogue at that time and his claim stands settled and closed after the grant of benefit of Rs.1 lakh in lieu of compassionate appointment, he cannot avail the benefit again by filing repeated applications/representations, as the benefit under the compassionate appointment scheme, can only be availed once. Suppressing the fact that his case has already been settled and closed, he obtained an order from this Court to get his representation decided afresh in view of his subsequently acquired qualification, which was dismissed after consideration in accordance to the policy of 2014, applicable when the matter was taken up for consideration.

**16.** Clause 12.2 of 2014 policy, which specifically pertains to stale and settled claim is reproduced as under :-

“12.2 इस परिपत्र के जारी होने की तिथि से पूर्व अस्वीकृत/निराकृत प्रकरणों पर पुनर्विचार नहीं किया जाएगा।”

**17.** It is the settled law that repeated representations do not give a fresh cause of action nor extend the limitation nor in absence of any provision in the policy, a settled and closed claim can be reviewed/reconsidered.

**18.** In view of the aforesaid, the action of respondents in refusing to reconsider his closed claim for grant of compassionate appointment on the basis of prevailing policy cannot be said to be illegal or arbitrary.

**19.** This petition being devoid of merits is accordingly dismissed. No order as to costs.

**(Smt. Nandita Dubey)  
Judge**

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