

The High Court Of Madhya Pradesh

WA-1384-2018

THE STATE OF MADHYA PRADESH

Vs

AJAY KUMAR

**Present: Hon'ble Shri Justice Ravi Shanker Jha, A.C.J.,
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.**

Shri Bhoopesh Tiwari, learned Govt. Advocate for the appellant.

Shri Sanjay Roy, learned counsel for respondent No.1.

Whether approved for reporting ?	
Law laid down	<p><i>An employee working in the Work Charged and Contingency Paid establishment does not get the status of regular employee in regular establishment by conferral of benefit of Revision of Pay rules or permanent status in the work charged establishment and, therefore, in absence of any scheme for compassionate appointment of dependent of an employee of work charged and contingency paid, his dependent has no right to be considered for compassionate appointment. (Relevant Para - 7)</i></p>

J U D G M E N T**(20-8-2019)****Per: Shri Vijay Kumar Shukla, J.**

The present *intra Court* appeal is filed under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Peeth Ko Appeal) Adhiniyam, 2005 being aggrieved by the order dated 22.1.2018 passed by the learned Single Judge, whereby the writ petition filed by the respondent No.1 (herein after referred as 'writ petitioner') has been allowed directing the respondents to consider the case of the petitioner for compassionate appointment.

2. Assailing the said order, learned Govt. Advocate appearing for the State/ appellant submitted that the father of respondent No.1 was an employee in the Work Charged and Contingency Paid Establishment. The services of the deceased employee was governed by the Rules called 'M.P. Geology & Mining Department Contingency Paid Employees Recruitment & Conditions of Service Rules, 1975' (herein after referred as 'Rules of 1975'). He submitted that there was no scheme for compassionate appointment for the dependents of a deceased employee of Work Charged and Contingency Paid Employee on the date of consideration of the application for

compassionate appointment of the writ petitioner. The said application was rejected by order dated 21.3.2013 on the ground that there was no scheme for compassionate appointment to a dependent of deceased employee of the said establishment. In lieu of compassionate appointment, there was scheme of grant of *ex gratia* payment. The counsel for the appellant/ State further submitted that the father of the writ petitioner was regularized in the Work-Charged and Contingency Paid Establishment itself and he was not an employee of the regular establishment.

3. It is further submitted that compassionate appointment is not a right of an employee and since there was no scheme on the date of consideration of the case of the writ petitioner for compassionate appointment, he was not entitled for consideration for compassionate appointment. In support of his contention he placed reliance on the judgment passed by the Full Bench of this Court in the case of **Bank of Maharashtra Vs. Manoj Kumar Deharia** reported in **2010(4) MPHT 18** and also the decision of another Full Bench in the case of **State of M.P. Vs. Laxman Prasad Raikwar - 2018(4) MPLJ 657**.

4. Counsel for the respondent No.1 submitted that since the father of the writ petitioner was regularized and therefore, the

learned Single Judge has rightly allowed the writ petition directing for consideration of his case for compassionate appointment.

5. We have heard learned counsel for the parties and we find that the father of respondent No.1 was employed as a Jeep Driver in the Regional Office of Directorate of Geology & Mining Department, Jabalpur in the Work Charged and Contingency Paid Establishment. On completion of period of three years of service in Work-Charged and Contingency Paid establishment, by an order dated 22.7.1999 his pay was fixed under the M.P. Pay Revision Rules, 1998. As per Rule 2(b) of Rules of 1975 'Contingency paid employee' means a person employed for full time in an office or establishment and whose pay is on monthly basis and is charged to 'office contingency' excluding employees who are employed for certain period only in the year. Rule 2(c) defines 'employee' to mean a contingency paid employee whereas, Rule 2(e) defines 'regular employee' under the State Government to mean government servants who are in regular employment holding permanent or temporary post under State Government as distinct from the posts paid from contingency. Rule 2(f) defines 'service' to mean M.P. Contingency Paid Employees service.

6. Thus, from the aforesaid Rules of 1975, it is crystal clear that the father of the writ petitioner was a contingency paid employee and not regular employee under the State Government. It is not in dispute that on the date of consideration of his case for compassionate appointment i.e. 21.3.2013, there was no scheme for compassionate appointment in respect of death of an employee working under the Work Charged and Contingency Paid establishment. The subsequent policy framed by the State Government providing compassionate appointment in respect of a dependent of work charged and contingency paid employee, would not apply in the case of respondent No.1, as on the date of consideration of his application for compassionate appointment admittedly, there was no scheme for compassionate appointment for the dependents of an employee working under the work-charged and contingency paid establishment. Full Bench of this Court in the case of **Manoj Kumar Dehariya** (supra) the Full Bench held that an application for compassionate appointment shall be considered and decided in accordance with the instructions / policy prevailing on the date of consideration. The same view has been reiterated in the case of **Laxman Prasad Raikwar** (supra).

7. In view of the aforesaid, we find that the order of the learned Single Judge holding that by conferral of benefit of revision of pay rules or permanent status in the work charged establishment to the father of the petitioner, he had acquired the status of permanent employee, cannot be sustained in view of the provisions of Rules of 1975. *An employee working in the Work Charged and Contingency Paid establishment does not get the status of regular employee in regular establishment by conferral of benefit of Revision of Pay rules or permanent status in the work charged establishment and, therefore, in absence of any scheme for compassionate appointment of dependent of an employee of work charged and contingency paid, his dependent has no right to be considered for compassionate appointment.*

8. Accordingly, the writ appeal is **allowed**. The order passed by the learned Single Judge directing the respondents to consider the case of the writ petitioner for compassionate appointment is set aside.

(RAVI SHANKER JHA)
ACTING CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
J U D G E