

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT  
JABALPUR**

<b>Case No.</b>	<b>W.P. No.25325 OF 2019</b>
<b>Parties Name</b>	Rajendra Kumar Raikwar vs. State of Madhya Pradesh and others
<b>Date of order</b>	<b>29/11/2021</b>
<b>Bench Constituted</b>	<b>Single Bench</b> : Justice Purushaindra Kumar Kaurav
<b>Order passed by</b>	Justice Purushaindra Kumar Kaurav
<b>Whether approved for reporting</b>	Yes
<b>Name of counsel for parties</b>	<b>For Petitioner:</b> Shri Choudhary Mayank Singh, Advocate <b>For Respondents/State :</b> Shri Devdatt Bhawe, Panel Lawyer.
<b>Law laid down</b>	<p>1. Compassionate employment is not an alternate method of public employment but the same is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and the same cannot be claimed as a matter of right.</p> <p>2. Compassionate appointment cannot be claimed as a matter of right as it is not a vested right and the policy prevailing at the time of death, would be applicable.</p> <p>3. Policy/circular prevalent at the time of death of deceased employee only is required to be considered and not the subsequent policy.</p>
<b>Significant paragraph numbers</b>	<b>6 &amp; 11</b>

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**ORDER**  
**(29/11/2021)**

In this petition under Article 226 of the Constitution of India, the challenge is to order dated 16.5.2017 (*Annexure P/3*) passed by the Chief Engineer, Public Health and Engineering Department of the State of Madhya Pradesh, rejecting the prayer of the petitioner for his compassionate appointment on account of the death of his father.

2. The undisputed facts in brief are as under:-

- (i) The father of the petitioner namely Late Laxman Prasad Raikwar was working on the post of “Helper” against Work Charged and Contingency paid Establishment under the respondent department, who passed away on 20.1.2015.
- (ii) The petitioner submitted an application for his compassionate appointment on 20.3.2015, as per policy dated 29.9.2014.
- (iii) On 31.8.2016, Clause 11.1 of the policy dated 29.9.2014 was clarified to the extent that the dependent of deceased employee who was working against Work Charged and Contingency paid Establishment would also be entitled for compassionate appointment. The State Government on 21<sup>st</sup> March, 2017 (*Annexure R/4*) has further clarified that the provision/decision dated 31.8.2016 providing compassionate appointment to the dependents of deceased employee working against Work Charged and Contingency paid

Establishment, would be applicable only w.e.f. 31.8.2016 and prior to that, the cases for compassionate appointment would be considered as per earlier provisions/policy dated 29.9.2014.

- (iv) The request for compassionate appointment of the petitioner has been turned down vide order dated 16.5.2017 (*Annexure P/3*) on the ground that the case of the petitioner would be governed by the earlier policy dated 29.9.2014, and the new provision/policy dated 31.8.2016 would not be applicable in his case.
- (v) On 24.4.2015 (*Annexure R/1*), the widow of Late Shri Laxman Prasad Raikwar had already been paid consolidated sum of Rs.2 Lacs as *Anukampa Anudan* as per Clause 11.1 of the policy dated 29.9.2014.

3. Learned counsel appearing for the petitioner has vehemently submitted that vide policy/circular dated 31.8.2016, the provision for compassionate appointment to the dependent of the deceased employee who was working on Work Charged and Contingency paid Establishment has been made, however, the same has to be read with the main policy dated 29.9.2014, and is applicable w.e.f 29.9.2014 itself. He has placed reliance on decisions of this Court in the cases of **State of Madhya Pradesh and others Vs. Bheru Singh<sup>1</sup>, Dilip More**

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1 W.A. No.241/2017 order dated 6.11.2017

**Vs. State of Madhya Pradesh and another<sup>2</sup> and State of Madhya Pradesh Vs. Sonu Jatav<sup>3</sup>.**

4. Learned counsel appearing for the State has opposed the writ petition and has submitted that the decisions as cited by the petitioner do not consider the clarification vide Annexure R/4 dated 21.3.2017, wherein it was clarified that the amended Clause 11.1 would be applicable from 31.8.2016 and any death occurred before 31.8.2016 will not be covered under amended Clause 11.1. The entitlement of compassionate appointment has to be considered as per the policy existing on the date of death of deceased employee. He has relied upon the judgment delivered by the Supreme Court in the case of **Indian Bank and others Vs. Promila and another<sup>4</sup>**.

5. I have considered the submissions made by the parties and perused the record.

6. It is settled legal position that compassionate employment is not an alternate method of public employment but the same is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and the same cannot be claimed as a matter of right.

7. For proper understanding of the policy, which was applicable on

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2 W.P. No.2692/2017 order dated 21.3.2018

3 W.A. No.601/2019 order dated 3.5.2019

4 (2020) 2 SCC 729

the date of death of the deceased employee, it is thought apposite to reproduce Clause 11.1 of the main policy dated 29.9.2014 which reads as under:-

“11. **कार्यभारित आकस्मिकता एवं दैनिक वेतन भोगियों हेतु प्रावधान**  
11.1 कार्यभारित/आकस्मिकता निधि से वेतन वाले एवं दैनिक वेतनभोगी कर्मचारियों के दिवंगत होने पर अनुकंपा नियुक्ति की पात्रता नहीं होगी परन्तु उनके परिवार के आश्रित नामांकित सदस्य को एकमुश्त रूपये 2.00 लाख (रूपये दो लाख) की राशि अनुकंपा अनुदान के नाम से दी जाएगी। उसमें ग्रेज्यूटी की राशि सम्मिलित नहीं होगी। इस राशि का भुगतान संबंधित विभाग के कार्यभारित/आकस्मिकता के मद के अंतर्गत वेतन मद से किया जावेगा।”

8. An extract of the circular dated 31.8.2016 is also necessary to be considered which reads as under:-

“राज्य शासन द्वारा निर्णय लिया गया है कि कार्यभारित एवं आकस्मिकता निधि से वेतन पाने वाले सेवा के मृतक कर्मचारियों के आश्रितों के लिए अनुकम्पा नियुक्ति का प्रावधान विद्यमान व्यवस्था अनुसार किए जाए। अतः सामान्य प्रशासन विभाग के परिपत्र दिनांक 29.09.2014 में जारी दिशा-निर्देशों के मापदण्ड के अनुरूप ही कार्यभारित एवं आकस्मिकता निधि सेवा से वेतन पाने वाले कर्मचारियों के दिवंगत होने पर उनके आश्रित को इसी सेवा की स्थापना के रिक्त पदों पर अनुकंपा नियुक्ति दिये जाने की कार्यवाही सुनिश्चित की जाये।”

9. There is no doubt that the Division Bench of this Court in the case of **Sonu Jatav**<sup>3</sup> has held that the circular dated 31.8.2016 is not a new policy but a circular by which existing policy dated 29.9.2014 was amended. It has also been held that to hold it otherwise, would be

detrimental to the interest of the dependent. There was already a decision of the Division Bench of this Court in the case of **Ashish Awasthi Vs. State of Madhya Pradesh**<sup>5</sup> wherein while taking into consideration the Full Bench decision of this Court in the case of **Bank of Maharashtra Vs. Manoj Kumar Dehariya**<sup>6</sup> and the judgment of the Supreme Court in the case of **Canara Bank and another Vs. M. Mahesh Kumar**<sup>7</sup>, it was held that the circular dated 31.8.2016 should be made applicable even to the cases where the deaths occurred before issuance of the said circular and, in that case, the circular dated 31.8.2016 was made applicable for the death which had occurred on 8.10.2015.

10. The Full Bench decision in the case of **Manoj Kumar Dehariya**<sup>6</sup> has been followed by another Full Bench decision of this Court in the case of **State of Madhya Pradesh Vs. Laxman Prasad Raikwar**<sup>8</sup> and it has been held that compassionate appointment cannot be claimed as a matter of right as it is not a vested right and the policy prevailing at the time of consideration of the application for compassionate appointment, would be applicable.

11. The decision of the Division Bench as mentioned above in the case of **Ashish Awasthi**<sup>5</sup> was assailed by the State Government before the Supreme Court in the case of **The State of Madhya Pradesh and**

5 W.A. No.1559/2018 order dated 12.12.2018

6 2010 (4) MPHT 18

7 (2015) 7 SCC 412

8 2018 (4) MPLJ 657

**others Vs. Ashish Awasthi**<sup>9</sup>. The Supreme Court has taken note of the Full Bench decision in the case of **Manoj Kumar Dehariya**<sup>6</sup> and has held that as the per policy/circular prevalent at the time of death of deceased employee only is required to be considered and not the subsequent policy. Even in the case of **Ashish Awasthi**<sup>5</sup> in compliance of the order of this Court, the dependent was already appointed on compassionate grounds, however, the Supreme Court rejected the prayer for not disturbing the said appointment and has held that once the judgment of the Division Bench of the High Court is quashed and set aside, the necessary consequences shall follow and the appointment of the respondent in that case was not protected.

12. In view of the aforesaid legal position settled by the Supreme Court in respect of the policy which is subject matter of the present writ petition, this petition is dismissed. No orders as to cost.

**(PURUSHAINDRA KUMAR KAURAV)**  
**JUDGE**

*Pushpendra*