

IN THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PURUSHAINDR KUMAR KAURAV

ON THE 27th OF JANUARY, 2022

WRIT APPEAL No. 1143 of 2021

Between:-

**RAKESH KUMAR MISHRA S/O LATE
SHRI KANHAIYA LAL MISHRA, LABOUR,
AGED ABOUT 35 YEARS, R/O VILLAGE &
P.O. CHORHATA, TEHSIL-HUZUR,
DISTRICT-REWA (M.P.) PIN CODE-486006.**

.....APPELLANT

(BY SHRI HAKIM KHAN QURESHI, ADVOCATE)

AND

1. **STATE OF MADHYA PRADESH THROUGH
SECRETARY, PRINCIPAL SECRETARY
PUBLIC WORKS DEPARTMENT
MANTRALAYA, VALLABH BHAWAN BHOPAL
(MADHYA PRADESH) PIN CODE NO.462004.**
2. **ENGINEERING-IN-CHIEF, PUBLIC WORKS
DEPARTMENT, NIRMAN BHAWAN, MADHYA
PRADESH LOK NIRMAN VIBHAG, PLOT
NO.27 & 28, JAIL ROAD, ARERA HILLS,
BHOPAL (MADHYA PRADESH) PIN CODE
NO.462004.**
3. **SUPERINTENDENT ENGINEER
(ELECTRICAL/MECHANICAL), PUBLIC
WORKS DEPARTMENT JABALPUR
DIVISION, NEAR VETERINARY COLLEGE,
CIVIL LINES JABALPUR (MADHYA
PRADESH) PIN CODE NO.482001.**

4. EXECUTIVE ENGINEER (ELECTRICAL/
MECHINICAL DIVISION) PUBLIC WORKS
DEPARTMENT, REWA (MADHYA PRADESH)
PIN CODE NO.486006.

.....RESPONDENTS

(BY SHRI ANKIT AGRAWAL, GOVERNMENT ADVOCATE.)

(Heard through Video Conferencing)

This appeal coming on for admission this day, Hon'ble Shri Justice Purushaindra Kumar Kaurav, passed the following:

ORDER

This *intra* Court appeal takes exception to order dated 13.07.2021, passed by the learned Single Judge in Writ Petition No. 5344 of 2021, whereby appellant's petition has been dismissed.

2. The grievance of the appellant-petitioner is that his father Late Shri Kanhaiya Lal Mishra S/o Late Shri Ramanuja Mishra was working as E-helper in Sub Division of P.W.D Building/Road, Rewa. The father of the appellant-petitioner died in harness on 28.09.1991 after rendering services for a period of almost 27 years. According to the appellant-petitioner, on 31.10.1991 his mother made an application for appointment on compassionate basis and on 22.04.2003 when appellant-petitioner became major, her mother submitted an affidavit giving her consent for appointment of appellant-petitioner on compassionate basis. The appellant-petitioner also stated that various representations were submitted to but no action was taken and, therefore, he filed the petition before this court.

3. The learned Single Judge found that father of the appellant-petitioner died in harness on 28.09.1991 and the writ petition was filed in the year 2021, therefore, the same suffers from delay and latches. Hence, the petition was dismissed.

4. We have heard the learned counsel for the parties and perused the record.

5. We find that in communication dated 22.10.2003 (Annexure P/8), it was specifically informed to the appellant-petitioner that since his father was working in the Contingency Paid Establishment Fund and there was no policy of the State Government to offer compassionate appointment to the dependents of the deceased who were working in the Contingency Paid Establishment Fund.

6. The Hon'ble Supreme Court in the recent judgment dated 18.11.2021 passed in the matter of *State of M.P. and others Vs. Ashish Awasthi*¹ has held that a case of compassionate appointment has to be considered on the basis of policy prevalent at the time of death of the deceased employee.

7. In view of the aforesaid, the appellant-petitioner is not found entitled as there was no policy of compassionate appointment to the dependent of the deceased who was working on Contingency Paid Establishment. Moreover, after lapse of almost 30 years from the date of death of his father, at present, it cannot be said that the family of the deceased needs immediate assistance so as to overcome from a sudden crises.

¹ Civil Appeal No.6903/2021.

8. Taking into consideration the overall facts and circumstances of the case, we hold that the learned Single Judge has rightly declined to invoke the equitable jurisdiction under Article 226 of the Constitution in favour of the appellant-petitioner. Accordingly, the writ appeal is dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MKL.