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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE

&
HON'BLE SHRI JUSTICE VISHAL MISHRA
ON THE 12th OF JULY, 2022

WRIT APPEAL No. 977 of 2021

Between:-

**DHARMENDRA KUMAR TRIPATHI, S/O LATE
SHRI UMAKANT TRIPATHI , AGED ABOUT 31
YEARS, OCCUPATION: UNEMPLOYED VILLAGE
MAJHIYARI POST DABHAURA TAH. TYOTHAR
DISTT. REWA (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI RAM NARAYAN TIWARI - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THR. THE
SECRETARY VETERINARY DEPARTMENT
MANTRALAYA VALLABH BHAWAN, BHOPAL
(MADHYA PRADESH)**
2. **STATE OF MADHYA PRADESH THR. THE
SCHOOL EDUCATION DEPARTMENT
MANTRALAYA VALLABH BHAWAN, BHOPAL
(MADHYA PRADESH)**
3. **THE DIRECTOR VETERINARY SERVICES
BHOPAL, DISTT-BHOPAL (MADHYA PRADESH)**
4. **THE JOINT DIRECTOR VETERINARY SERVICES
DISTT-REWA (MADHYA PRADESH)**
5. **THE CHIEF EXECUTIVE OFFICER JANPAD
PANCHAYAT NAIGARHI DISTT-REWA (MADHYA
PRADESH)**
6. **DISTRICT EDUCATION OFFICER REWA, DISTT-
REWA (MADHYA PRADESH)**
7. **THE COLLECTOR R E W A , DISTT-REWA
(MADHYA PRADESH)**

8. THE COMMISSIONER REWA DIVISION DISTT-
REWA (MADHYA PRADESH)

.....RESPONDENTS

(SHRI S. S CHAUHAN - GOVERNMENT ADVOCATE FOR
RESPONDENT NOS. 1, 2, 3, 4, 6, 7 AND 8)

*This appeal coming on for admission this day, Hon'ble Shri Justice
Ravi Malimath, Chief Justice passed the following:*

ORDER

The case of the writ petitioner is that his father, who was working as an Assistant Veterinary Officer died in harness on 08.12.2000. The petitioner made an application for grant of compassionate appointment. He was granted a contractual appointment vide order dated 26.06.2002 as Samvida Shala Shikshak Varga-II. The appointment was for a period of three years. Thereafter, by the order dated 26.11.2002, merely after a period of five months, the appointment was cancelled on the ground that the said post was not available. Thereafter, he made a number of representations to the respondents but nothing came of it. Hence, the instant writ petition was filed. By the impugned order, the learned Single Judge dismissed the writ petition. Hence, this appeal by the writ petitioner.

The primary plea of the appellant is that he was entitled for grant of appointment on compassionate grounds. The same has not been granted to him. On the contrary, he was appointed on contract basis. Even that has been cancelled. Hence, he pleads that there has been a gross miscarriage of justice by the respondents. That he has suffered immensely because of wrongful acts of the respondents.

A return on behalf of the respondents was filed. Learned counsel firstly contended that the impugned order was passed in the year 2002 and the petition

was filed in the year 2014. Hence, it has to be dismissed on the ground of delay itself.

That since as on the date of death of the petitioner's father, no post was vacant in the regular establishment, he was granted the appointment on contract basis. Thereafter, it was cancelled, since no such post was vacant. After cancellation, the petitioner made a representation to the Collector for reconsideration of his case for compassionate appointment. The same was forwarded to the DEO and thereafter, to the Joint Director Veterinary Sciences. Thereafter, the Director closed the matter of the petitioner that as per Clause-4.6 of the Policy dated 22.01.2007, the cases which have been rejected/decided prior to 01.01.2007 would not be reviewed.

That since the claim of the petitioner was already finalized in the year 2007 and was unchallenged by the petitioner, after a gap of seven years the petitioner cannot claim compassionate appointment. Hence, while supporting the impugned order, it was prayed that the petition be dismissed.

Learned Government Advocate has filed an additional affidavit in this proceeding. He has stated that presently there are three posts which are vacant in general category of employees in the Veterinary Services Department Rewa Division. The further contention of the learned Government Advocate is to the effect that even though the petitioner was entitled for grant of appointment on compassionate ground, since there were no posts available, the contractual appointment was granted. We asked him to justify as to how a contractual appointment can be granted *vis-a-vis* a regular appointment on compassionate ground. He places reliance on the policy dated 01.05.2000 as produced vide Annexure-AR/2 with specific reference to Clauses 4, 5 and 6.

We have heard learned counsels.

We are of the view that the plea of the State cannot be accepted. An appointment on compassionate grounds is an appointment to a regular post. Therefore, all consequences will follow. An appointment based on contract would entail the consequences that arise out of a contractual appointment. The rules do not permit substitution of an appointment on compassionate grounds through contractual appointment. Therefore, the appointment of the petitioner on contractual ground is illegal. The respondents had no authority to do so. The further contention that as on that day the posts were not available may be a matter of fact to be ascertained. Even assuming the posts were not available that does not give a right to the respondents to convert an appointment on compassionate grounds on contractual basis. Hence, we do not find any ground in the said contention.

The contention that there is a delay in filing the writ petition is also misconceived and cannot be accepted. Here is a man who was entitled for grant of appointment on compassionate ground. In law, such an application has still not received any consideration by the respondents. Only because a contractual appointment has been made does not indicate that the application for grant of compassionate appointment has been satisfied. In law, the application seeking grant of appointment on compassionate grounds continues to remain. They have still not granted him compassionate appointment nor have they rejected the application. Therefore, when they have granted him appointment on contractual basis, it is not an answer to the application seeking grant of appointment on compassionate grounds. Therefore, the delay, if any, is to be held against the respondents and not against the petitioner. Therefore, we find that the right of the petitioner cannot be taken away merely because of he challenging the

cancellation of the same.

So far as Clauses 4, 5 and 6 are concerned, nowhere does it indicate that a compassionate appointment can be substituted by a contractual appointment. We have also noticed that Clause-4 pertaining to other important condition would also indicate that a person entitled for appointment on compassionate grounds will be appointed to the regular vacant post.

In view of the action of the respondents being unsustainable in law where grave injustice has occasioned, we are of the view that ends of justice will be met by directing the respondents to pay costs to him. As a result of the reasonings hereinabove, the writ appeal is allowed. The order of the learned Single Judge dated 06.09.2021 passed in W.P. No.17990 of 2014 is set aside.

The writ petition is allowed on the following terms:-

(a) The respondent No.3 is directed to appoint the petitioner on compassionate grounds to one of the three posts which the respondents claim are vacant. The same to be done within a period of eight weeks from the date of receipt of a copy of this order.

(b) The respondents are directed to pay costs in a sum of Rs.1,00,000/- (Rs. One Lakh only) to the appellant jointly and severally within a period of eight weeks.

Pending interlocutory applications are disposed off.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE