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WA-2986-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA,
ACTING CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

ON THE 19th OF AUGUST, 2026

WRIT APPEAL No. 2986 of 2025

DIVYA KUSHWAH

Versus

*MADHYA PRADESH MADHYA KSHETRA VIDYUT VITRAN
COMPANY LIMITED AND OTHERS*

.....
Appearance:

Shri Upendra Yadav - Advocate for the appellant.

Ms. Smrati Sharma - Advocate for the respondents.
.....

ORDER

Per. Vivek Rusia, Acting Chief Justice

The appellant/petitioner has filed this Writ Appeal against the vide order dated 3.9.2025 whereby Writ Petition No. 18698/2023 has been dismissed by Single Judge on the ground that he did not submit the application for compassionate appointment within the period of 6 months.

Facts of the case:-

1. Admittedly father of the petitioner died on 4..2.2015 while working in the services of respondents company. Following the death of the family's sole breadwinner, the petitioner's brother, being an elder son initially applied for a compassionate appointment with MPMKVV Co. Ltd., Gwalior, on 17.7. 2015. After procedural exchanges, the department returned the



application on January 6, 2016, directing him to rectify defects and submit a fresh application. However, the brother could not pursue his claim because he lacked the mandatory ITI Diploma qualification required for the post.

2. With family consent, the petitioner subsequently filed an application for compassionate appointment on October 4, 2021. The department rejected it on December 23, 2021, citing delay under Clause 3.3 of the 2018 Policy, which stipulates a six-month period of limitation from the date of the employee's death. Despite the petitioner's representation citing Supreme Court precedent (*State of M.P. v. Ashish Awasthi, 2022(2) SCC 157*) to argue that the policy in effect at the time of death should apply and detailing the earlier procedural history, the General Manager (City Circle), MPMKVV Co. Ltd., Gwalior, issued a final order on June 22, 2023, affirming the rejection. Thereafter, writ petitioner filed a writ petition before the writ court it was dismissed vide impugned order and hence this writ appeal is before this court.

3. Learned Counsel for the appellant submits that the learned Writ Court failed to appreciate that the appellant's family had already raised a claim for compassionate appointment within the prescribed period, as her brother had submitted his application on 20.07.2015, within six months of the death of the deceased employee. Therefore, the appellant's subsequent application ought not to have been treated as an entirely fresh and delayed claim.

4. It is submitted that the learned Writ Court further failed to consider that the appellant's brother's application was returned by the department and



that he could not submit a fresh application only because he did not possess the requisite ITI Diploma qualification. The appellant thereafter applied with the consent of the family as the earlier claimant was not eligible. Thus, the delay in the appellant's individual application could not be considered in isolation from the earlier application submitted by her brother. The learned counsel submitted that the appellant should not be made to suffer for circumstances which arose during the consideration of the family's original claim for compassionate appointment. One family member is entitled for compassionate appointment as per policy therefore in selection of suitable dependent all dependents cannot apply together, rather the company should have called the family of the deceased to submit a fresh application by other eligible dependent.

5. Lastly, the learned Writ Court failed to appreciate that the 2018 Compassionate Appointment Policy could not mechanically be applied to a case where the employee died on 04.02.2015. Relying upon *State of M.P. v. Ashish Awasthi (supra)*, the appellant contends that the policy prevailing on the date of death ought to be considered while determining her claim for compassionate appointment.

6. *Per contra* it is contended by the learned counsel appearing for the respondents that the appellant's application cannot be considered, as the same was filed beyond limitation; thereafter deny the appellant's claim on the ground of delay has rightly been upheld by the Hon'ble Writ Court. Learned counsel is relying *the case of Umesh Kumar Nagpal v. State of Haryana* (1994) 4 SCC 138 in which the Supreme Court of India held



that Compassionate appointment is intended to meet the immediate financial crisis and is not a vested right which can be exercised at any time.

Appreciation & Conclusions

7. The facts stated above are not in dispute that the sole earning member working in the respondent's establishment died while in service. After the death, the elder son submitted an application for compassionate appointment, but the same was not considered as he was not fulfilling the minimum qualification for the post under consideration. However, he did not pursue his claim further as he was unable to procure the qualification. The petitioner/appellant is a daughter of the deceased employee, submitted an application with the consent of another family member to get the compassionate appointment, which was rejected on the technical round that is limitation.

8. The purpose of providing compassionate appointment is to give another source of income by way of appointment of one of the dependents in the same department, subject to fulfilling the eligibility criteria as per policy for compassionate appointment or prevailing Recruitment Rules. The Competent Authority of the employer department is required to examine that the dependent who has applied for compassion appointment is fulfilling the minimum qualification for the post and question and if it concludes that such dependent is not fulfilling the qualification or not suitable for the post, then it is incumbent upon the competent officer to call upon the family of the disease and advise them to submit an application by another dependent who fulfil the qualification , rather the closing the case on technical ground.



While dealing with the appointment on compassionate ground, the actual compassion and sensitivity should be shown by the competent authority rather than rigid and technical attitude. Most of the time the dependence of the deceased do not get correct advice for applying under the policy of compassionate appointment; then, in such cases, the department should take responsibility to give proper advice as to how the eligible dependent can apply to get the benefit of the policy.

9. It is not expected from all family members of the dependent to apply together, and whosoever is found suitable would be considered for appointment. A similar situation came before the full bench High Court of Bombay in the matter of **Kalpana Wd/o. Vilas Taram and another v. State of Maharashtra** reported in 2024 SCC OnLine Bom 4258. The Full Bench has held that substitution of one dependent by another in a compassionate appointment claim is permissible and does not constitute a fresh application, as the family seeks only one appointment. Where the original applicant was not appointed, substitution does not create a second claim and may be necessary to fulfil the scheme's purpose. The relevant paras are produced below:

23. Thus, it is evident that, if a family member of the deceased/incapacitated employee applies for substitution of his name with another family member, it cannot be treated as a fresh application or subsequent application or it cannot be implied that more than one member is seeking compassionate appointment.

24. The scheme permits compassionate appointment to one eligible legal heir of the deceased/incapacitated employee with an object to enable the family to tide over the sudden financial



crisis. In the circumstances, if substitution is permitted, it would amount to replacement of name by another name. As substitution does not amount to making of a fresh application or staking a claim by more than one legal heir of the deceased, it cannot be said that substitution would run counter to the purpose and object of compassionate appointment.

25. From the purpose and object of the compassionate appointment, it is evident that, some source of livelihood is to be provided to any one member of the family to make both ends meet. In case of substitution, the name of another member would be substituted in the wait list in place of earlier member. In that eventuality also the employment will be provided to only one member, as per policy. Therefore, it cannot be said that, substitution would defeat the object of compassionate appointment.

26. Furthermore, keeping in mind the object and purpose of the appointment on compassionate ground, that is to provide succour to the family, it does not matter whether the employment is provided to X member of the family or Y member of the family as long as the scheme permits to provide employment to any one member of the family. If the substitution is permitted, the only change which will occur is that the name of 'X' will be replaced by 'Y' member and nothing beyond that.

27. It is for the family to decide which member of the family should seek the employment on behalf of the family. Therefore, a rigid approach to not allow any substitution to take place is not an appropriate measure of providing succour and help to the family of the deceased government servant, which is the very object and rationale behind the scheme.

10. In view of the above discussion, we cannot give approval to the impugned rejection order passed by the respondents as well as the order



passed by the writ Court dismissing the petition on technical Ground.. WE hereby remand the matter back to the company authority to consider the application submitted by the petitioner/ appellant on compassionate grounds within 30 days from the date of production of certified copy of this order. We hear by expect from the authority that they will not reject the application on technical ground by passing on speaking order.

11. This Writ Appeal is allowed and order dated 3.9.2025 whereby Writ Petition No. 18698/2023 is by sat aside. No order as to cost.

(VIVEK RUSIA)
ACTING CHIEF JUSTICE

(PAVAN KUMAR DWIVEDI)
JUDGE