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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 20th OF APRIL, 2022

WRIT PETITION No. 2834 of 2015

Between:-

1. **VISHAL PANDEY**

2. **SMT.. MANJU LATA PANDEY**

.....PETITIONERS

(BY SHRI SANJAY SETH, ADVOCATE)

AND

1. **FOOD CORPORATION OF INDIA ITS MANAGING
DIRECTOR F.C.I. HEAD OFFICE MUMBAI
(MAHARASHTRA)**
2. **GENERAL MANAGER FOOD CORPORATION OF
INDIA SHANTI MARG, SHYAMLA HILLS (MADHYA
PRADESH)**
3. **DEPOT MENAGER FOOD CORPORATION OF INDIA
DISTT. BETUL (MADHYA PRADESH)**
4. **GENERAL MANAGER FOOD CORPORATION OF
INDIA SECOND FLOOR, SHANTI MARG, SHYAMLA
HILLS (MADHYA PRADESH)**

.....RESPONDENTS

*(BY SHRI MUKESH KUMAR AGRAWAL, COUNSEL FOR
RESPONDENTS NO.1 TO 4)
(SHRI ABHAY SINGH KUSHWAHA, INTERVENOR)*

.....
*This petition coming on for hearing this day, the court passed the
following:*

ORDER

This writ petition is filed seeking quashing of order dated 10.02.2015(Annexure P-10) whereby the General Manager (R), FCI, RO, Bhopal has rejected the application moved on behalf of the appellant No.1 Vishal Pandey for grant of compassionate appointment by not treating him to be dependent family member of the deceased employee, namely Late Shri Girish Pandey.

Facts in brief which are not disputed are that Late Shri Girish Pandey was serving in the Office of respondent No.3 as Head Watchman (Mukhya Prahari), he died while in service on 09.05.2010, leaving behind his widow Smt. Manju Lata Pandey, petitioner No.2 and sole son Vishal Pandey, petitioner No.1.

It is also not in dispute that at the time of death of Shri Girish Pandey, petitioner was a minor as his date of birth is 06.06.1995 as is apparent from Annexure P-2.

On attaining the age of majority, petitioner No.1 had made an application for grant of compassionate appointment on 30.01.2014, as is contained in Annexure P-4, along with his High School Certificate Examination and Higher Secondary School Certificate Examination mark sheet.

It is also not in dispute that this application was forwarded by the Manager (Administration) acting on behalf of the Regional Manager to the General Manager for further action on 19.02.2014, Annexure P-8.

When no action was taken then petitioners had filed W.P. No.6011/2014(s) which was disposed of by another Bench of this Court vide order dated 01.05.2014, Annexure P-9, directing the competent authority to decide the claim of the petitioners through a speaking order.

Thereafter vide impugned order dated 10.02.2015. Annexure P-10, petitioners representation came to be rejected on account of the fact that petitioner No.1 was not treated to be 'dependent family' member of the deceased employee.

It is submitted that Late Shri Girish Pandey had filed an application under Section 6 of Hindu Minority and Guardianship Act claiming custody of petitioner No.1, but vide order dated 11.05.2007 that application was rejected by the Court of First Additional District Judge, Narsinghpur.

It is also submitted that upon death of Shri Girish Pandey one Shivam Pathak had filed Succession case No.18/2010, in which, First Civil Judge, Class-I, Betul, allowed the application and held that Shri Girish Pandey had executed a registered Will in favour of Shivam Pathak on 09.02.2000 in the office of Sub Registrar, Itarsi and on the basis of said Will a succession certificate was issued to receive service dues and estate of Shri Girish Pandey.

It is submitted that neither the right to compassionate appointment can be willed nor it comes within the definition of 'estate', and merely because petitioner No.2 was living separately from her husband along with petitioner No.1, status of the petitioner No.1 as a son can not be taken away so to deny benefit of compassionate appointment.

Shri Mukesh Kumar Agrawal, learned counsel for respondents No.1 to 4 and Abhay Singh Kushwaha, learned counsel for the intervenor submits that as per the scheme for compassionate appointment, applicable to the respondents and as is contained in Office memorandum dated 09.10.1998 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension/Department of Personal and Training in Part-II, it is provided that scheme for compassionate appointment is applicable to a dependent family member.

Note-I defines dependent family member which include son and adopted son but condition is that he should have been wholly dependent on the Government servant/member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.

Placing reliance on this Office Memorandum it is submitted that the petitioner No.1 was admittedly living separately from his father, therefore, he cannot be said to be dependent on the deceased employee. It is also pointed out that in divorce case No.30-A/2005 a decree of divorce was passed against which petitioner No.2 Smt. Manju Lata Pandey, had filed an appeal. In view of such matters, it is submitted that petitioner No.1 is not entitled to any compassionate appointment, being not dependent upon his father.

After hearing learned counsel for the parties and going through the record, as per Oxford Advanced Learner's Dictionary of Current English, A S Hornby, 7th Edition, published by Oxford University Press, 'dependent', as a noun is a person, especially a child, who depends on another person for a home, food, money, etc.

According to this dictionary, 'dependency', is the state of needing help and support of in order to survive or be successful. When this definition is taken into consideration then, it is evident, that reliance of the learned Counsel for the respondents on the fact that petitioner No.2 had separated from her husband is of

no consequence because despite divorce of petitioner No.2, petitioner No.1 will be dependent on his father with whom petitioner No.1, who was minor had not severed any relationship. It is also not in dispute, that deceased Girish Pandey, was paying maintenance towards the up keep of his son i.e. petitioner No.1, as is evident from para 14 of the order dated 11.05.2007, Annexure P-11. Thus the fact of dependency is established inasmuch as, firstly, petitioner No.1 being son will be covered by the definition of 'dependent family member' and secondly; deceased employee paying the maintenance establishes the dependence of the petitioner No.1 on the deceased Government servant. No narrow construction can be given to the clause 'wholly dependent', so to frustrate the basic aim of providing 'bread and butter' to the legal heir of a deceased employee.

Hon'ble Supreme Court in **State of M.P. & Others vs. M.P. Ojha and Anr, 1997(supp) 6 SCR, 654**, has held that the expression "wholly dependent" is not a term of art. It has to be given its due meaning with reference to the Rules in which it appears. We need not make any attempt to define the expression "wholly dependent" to be applicable to all cases in all circumstances. We also need not look into other provisions of law where such expression is defined. That would likely to lead to results which the relevant Rules would not have contemplated. The expression "wholly dependent" has to be understood in the context in which it is used keeping in view the object of the particular Rules where it is contained. We cannot curtail the meaning of "wholly dependent" by reading into this the definition as given in SR 8 which has been reproduced above. Further, the expression "wholly dependent" as appearing in the definition of family as given in Medical Rules cannot be confined to mere financial dependence. Ordinarily dependence means financial dependence but for a member of family it would mean other support, may be physical, as well. To be "wholly dependent" would therefore include both financial and physical dependence. If support required is physical and a member of the family is otherwise financially sound he may not necessarily be wholly dependent.

In view of such facts and legal pronouncement, I am of the opinion that impugned order deserves to be quashed as it is arbitrary and has failed to take into consideration a comprehensive meaning of the word 'dependent'. Respondents

have tried to supply a very restricted meaning to the clause 'dependents', vide Annexure P-10, whereas admittedly, by virtue of divorce of his mother, petitioner No.1 will not lose his status of being a son who is covered by definition of 'dependent family member'.

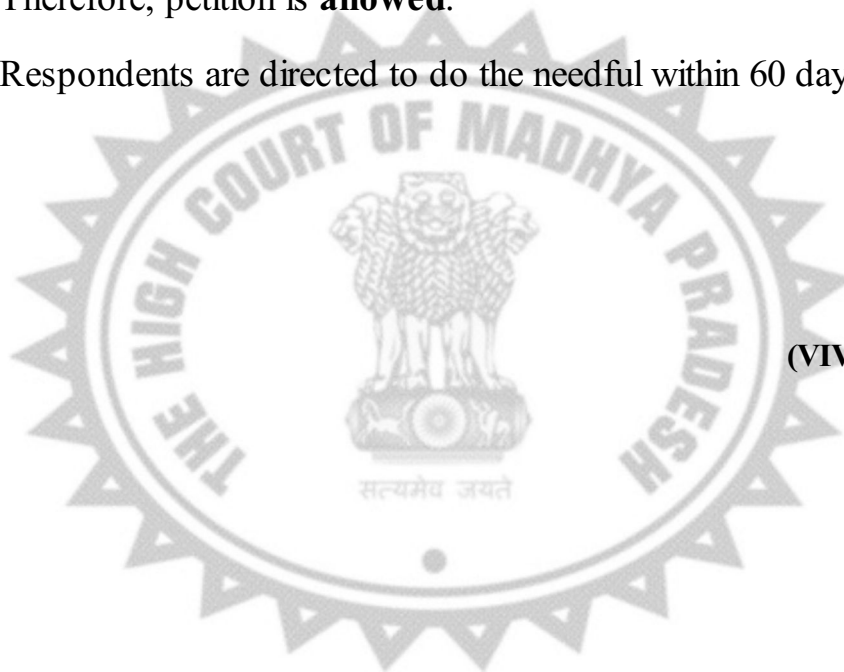
As far as, stand of the intervenor is concerned, he is beneficiary of the Will, but at the same time a post for compassionate appointment is not estate of the deceased employee and it cannot be Willed, therefore, right to claim that post on the basis of compassionate appointment will solely rest with the petitioner No.1 and that cannot be claimed or interfered by the proposed intervenor.

Thus, it is held that proposed intervenor has no status in the present case.

Therefore, petition is **allowed**.

Respondents are directed to do the needful within 60 days from today.

Tabish



(VIVEK AGARWAL)
JUDGE