

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRANAY VERMA

WRIT APPEAL No. 157 of 2019

Between:-

GENERAL ADMINISTRATION

1. DEPARTMENT PRINCIPAL SECRETARY
VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
2. COLLECTOR UJJAIN (MADHYA PRADESH)

.....APPELLANT

(BY SHRI ADITYA GARG, LEARNED GOVERNMENT ADVOCATE FOR THE APPELLANT)

AND

PREMSINGH S/O ISHWARSINGH RAJAWAT
, AGED ABOUT 27 YEARS, B-3,
SECTOR 139-A, ADARSH NAGAR,
DEWAS ROAD, UJJAIN (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI A.K. SETHI, LEARNED SENIOR COUNSEL ALONG WITH RAHUL SETHI, LEARNED COUNSEL FOR THE RESPONDENT)

(Heard through Video Conferencing)

JUSTICE VIVEK RUSIA passed the following:

ORDER

(15/02/2022)

The State of Madhya Pradesh has filed this appeal against the order dated 20.08.2018 passed in W.P. No.5436/2017 whereby Writ Court has directed State to consider the case of the writ petitioner for grant of compassionate appointment on merit ignoring clause 4.1 of the policy dated 29.09.2014.

The facts of the case in short are as under:

1. Late Ishwarsingh Rajawat working on the post of peon in the office of collector Ujjain. He died on 12.09.2016 due to cardiac arrest

while in employment. The writ petitioner being a second son dependent of income his father became eligible to claim a compassionate appointment after the death of his father. He submitted an application in prescribed form on 02.10.2016 in the Office of Collector claiming compassionate appointment on the post of Assistant Grade -III by virtue of his educational qualification B.Com. M.A. and A.D.C.A. In support of the application, he has submitted the affidavit of his mother Smt. Padma Kunwar to the effect that she has no source of income. Her elder son Jitendra Rajawat is working in the Indian Army since 2008 has also given an affidavit that he is not in a position to support the family financially as he has been living separately with his wife and not providing any financial aid to the father, mother and writ petitioner.

2. Vide letter dated 18.10.2016, the Collector Ujjain has sought direction from Principal Secretary, GAD of Madhya Pradesh for grant of compassionate appointment to the petitioner in view the condition No.4.1 of the policy dated 29.09.2014. Vide letter dated 10.11.2016, the Deputy Secretary of GAD of Madhya Pradesh has held that in view of clause 4.1, the writ petitioner is not entitled to get the compassionate appointment. Hence, the petitioner filed a writ petition, and it came to be allowed vide order dated 20.08.2018 on the ground that the employment in the Indian Army is a tenure appointment. The Writ Court has held that the brother of the writ petitioner after joining the Indian Army has been living separately and for which the writ petitioner cannot be made to suffer.

3. Being aggrieved by the above direction given by the writ court the State of Madhya Pradesh has preferred this Writ Appeal on the ground that since the elder brother of the writ petitioner is already in employment of Indian Army, which makes the petitioner ineligible to claim the compassionate appointment by virtue of condition No.4.1 of the policy dated 29.09.2014. It is further submitted by the learned Government Advocate for the appellant that the language of clause 4.1 is very clear, no other interpretation can be given. Even otherwise the policy of compassionate appointment is only a policy framed by the Government has no statutory force, hence, no writ of mandamus can be issued to the State for providing employment. Shri Garg learned Government Advocate has placed reliance on the judgment passed by the Division Bench of Court in the case of *Prajesh Vs. State of M.P.* in which clause 4.1 of the aforesaid policy has been examined and held that the dependent of the deceased's family is not entitled to a compassionate appointment if one of the family members is in Government Service, even if he is not supporting the other dependent, therefore, the order passed by Writ Court runs contrary to the aforesaid judgment, hence, liable to be set aside.

4. *Per contra* Shri A.K. Sethi, learned Senior Counsel appearing on behalf of the writ petitioner has argued that the Hon'ble Writ Court has rightly held that the employment in the Indian Army is different from the service of State Government as well as Central Government. In the Indian Army, there is no uniform age of retirement at the age of 60 or 62 years. The brother of the petitioner was initially appointed on the

post of Soldier and now he has been promoted to the post of Naik for which retirement age is 47 years and he would be retiring from service on 31.12.2030. In clause 4.1, if any member is in employment in services of Corporation, Council and commission etc. then only one of the dependents shall be ineligible to claim the compassionate appointment. Employment in the Armed forces is liable to be excluded as it cannot be compared with government service. Even otherwise being an employee of the Indian Army, the brother of the writ petitioner is posted in various parts of the country, and he is having his own family to support. He is out from dependence of the deceased employee; hence, no interference is warranted and writ appeal is liable to be dismissed.

5. The controversy involved in this appeal is in a very narrow compass. As per the policy after the death of a Government employee, his wife shall be entitled to the compassionate appointment and if she is not having qualifications or is not interested in the compassionate appointment, she can nominate her son or unmarried daughter for said appointment. If the deceased is having a daughter only then surviving husband or wife can nominate a married daughter also for compassionate appointment, even the stepson and stepdaughter are also entitled to claim a compassionate appointment. In case, a government employee dies before marriage then his brother and unmarried sister can also claim compassionate appointment. Clause 4 of the policy provides the disqualifications for compassionate appointments. In the present clause, clause 4.1 applies which is

reproduced below:

4.1 दिवंगत शासकीय सेवक के परिवार का कोई भी सदस्य यदि पूर्व से शासकीय सेवा अथवा निगम, मण्डल, परिषद आयोग आदि में नियमित सेवा में नियोजित हो, (आवेदक के परिवार का कोई सदस्य नियमित सेवा में नियोजित न होने का शपथ पत्र प्रस्तुत करना होगा)।

The language of this clause is very clear as it says that if any member of the family of the deceased Government employee is already in regular service, then other dependents shall not be eligible to claim compassionate appointments. The applicant shall submit an affidavit that no other family member is in employment. The Division Bench of this Court in case *Prajesh Vs. State of M.P.* has considered clause 4.1 of the policy and held that a brother who is living separately is also come under the definition of a member of the family, therefore, merely a member of the family of the deceased servant, who is in employment in government service or corporation or board, council or commission has started living separately, he cannot be excluded from the class under clause 4.1 of the policy. The Writ Court has considered the nature of employment in the Indian Army and held that it cannot be equated with regular services in the Government as well as Central Government, hence, the case of the petitioner deserves to be considered on merit ignoring clause 4.1 of the policy.

6. Recently, this clause 4.1 of the policy again come for consideration before Division Bench of this Court in Writ Appeal No.13/2020 in which Division Bench of this Court has held that merely rejecting the plea of writ petitioner on the ground that her brother is in employment is our considered may not be correct hence,

the matter has been remitted back to conduct an enquiry with regard to the penury of the petitioner and as to whether her brother who had secured the employment is taking care of the family or not or other related issues. In the said case, the Writ Court had dismissed the writ petition placing reliance on the judgment passed in the case of *Prajesh (supra)*. In the case in hand also the mother has filed an affidavit to the effect that she is not getting any financial support from his first son because he is living elsewhere for the last 8 years with his family and not getting any financial aid. Brother of the petitioner Jitendra Rajawat has also given an affidavit that he is separately living along with his wife and given his life to serving the Indian Army for this Country. Employment in the armed force cannot be compared with service in the state or central Government. His late father and brother used to look after his mother, hence his younger brother is entitled to get a compassionate appointment. By letter dated 10 November 2016 without verifying the aforesaid fact and conducting any enquiry, respondent No.1 has communicated its decision to the Collector in view of clause 4.1. of the policy, the writ petitioner is not entitled to compassionate appointment.

7. As per clause 2.1. of the policy in question only wife and husband are treated dependent as the case may be on a government employee and they have first right to claim the compassionate appointment, in case wife or husband as the case may be is ineligible then he /she can nominate son or unmarried daughter. The nomination of a son who should be unemployed and not have any source of

income, therefore, survival either wife or husband cannot nominate son who is already in employment. The son who is in employment is not entitled to claim a compassionate appointment. Son means who is not in employment. The son who is already in regular employment constitute his own family hence he is seized to be a member of the family of the deceased employee. In the family of a working son, his brother has no claim. Hence, we are not inclined to interfere with the impugned order. The order passed by the Writ Court be complied with within a period of 60 from today.

Writ Appeal is hereby dismissed.

(VIVEK RUSIA)
JUDGE

(PRANAY VERMA)
JUDGE

praveen/-