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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 5th OF JANUARY, 2024

WRIT PETITION No. 8461 of 2023

BETWEEN:-

VINAY KUMAR ATHIYA S/O LATE SHRI GANESH PRASAD ATHIYA, AGED ABOUT 20 YEARS, OCCUPATION: CONSTABLE (M) POSTED AT PRESENT R 7 D POLICE HEADQUARTER JAHANGIRABAD BHOPAL (MADHYA PRADESH)

.....PETITIONER

(BY SHRI DEVENDRA KUMAR TRIPATHI - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SERETARY HOME DEPARTMENT VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
2. POLICE HEAD QUARTER, M.P. BHOPAL THROUGH ADDITIONAL DIRECTOR GENERAL OF POLICE (ADMINISTRATION) JAHAGIRABAD, BHOPAL DISTRICT BHOPAL (MADHYA PRADESH)
3. SUPERINTENDENT OF POLICE, SAGAR DISTRICT SAGAR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI VIJAY KUMAR SHUKLA - PANEL LAWYER)

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This petition coming on for admission this day, the court passed the following:

ORDER

This petition is filed being aggrieved of the action of the respondents in giving him appointment on compassionate basis as Constable (M). Petitioner's contention is that his father died in harness on 08.07.2017. On 23.01.2018, the

petitioner was given appointment as Bal Arakshak as he had not attained the age of 18 years. On his attaining the age of majority, his compassionate appointment as Bal Arakshak was brought to an end and he was given appointment as Arakshak (M).

It is submitted that he is challenging his appointment on the post of Constable (M) on the ground of discrimination inasmuch as the petitioner has passed CPCT examination and is entitled to be appointed as ASI (M) and similarly situated persons have been given appointment as ASI (M) but the petitioner is given appointment as Constable (M).

Placing reliance on paragraph 5.1 of the State Policy for grant of compassionate appointment as contained in Annexure P-6 dated 29.09.2014, it is submitted that appointment should have been given on the lowest post to be filled by direct recruitment. It is submitted that the post of Constable (M) is not a post for direct recruitment.

Shri Vijay Shukla, learned Panel Lawyer submits that the post of Constable (M) is a direct recruitment post and the petitioner having accepted appointment on compassionate basis in the year 2018, is estopped from taking this plea after lapse of five years in terms of the provisions contained in paragraph 13.1 of the same policy which provides that once a person accepts an appointment on compassionate basis, then he is estopped from seeking appointment on any other post.

Learned counsel for the petitioner could not point out from the relevant rules that the post of Constable (M) is not a post meant for direct recruitment.

In this regard law is also crystal clear. In the case of State of *Rajasthan v. Umrao Singh, (1994) 6 SCC 560*, Hon'ble the Supreme Court has held that once a compassionate appointment was given and accepted, the right to such

appointment stood exhausted and second consideration for a higher post was not warranted.

Hence, looking to the fact that the petitioner accepted his compassionate appointment as Constable (M), therefore, he is precluded from claiming appointment on any higher post after having accepted the appointment once, in the light of the law laid down by Hon'ble the Supreme Court in the case of *Umrao Singh* (supra).

Accordingly, the writ petition being devoid of merit, fails and is hereby dismissed.

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VIVEK AGARWAL)
JUDGE