

कार्यालय प्रमुख अभियंता
लोक स्वास्थ्य यांत्रिकी विभाग
जल भवन, बाणगंगा, भोपाल

क्रमांक 123 /विधि /प्र.अ./लो.स्व. यां.वि./2024
प्रति,

भोपाल, दिनांक 04/01/2024

- (1) समस्त मुख्य अभियंता
लोक स्वास्थ्य यांत्रिकी विभाग
परिक्षेत्र _____
वि./यां. परिक्षेत्र _____
- (2) समस्त अधीक्षण यंत्री
लोक स्वास्थ्य यांत्रिकी विभाग
मंडल/परियोजना मंडल _____
- (3) समस्त कार्यपालन यंत्री
लोक स्वास्थ्य यांत्रिकी विभाग
खंड _____

विषय :- दिनांक 31.08.2016 के पूर्व मृत हुये कार्यभारित कर्मचारियों के परिजनों द्वारा अनुकंपा नियुक्ति प्राप्त करने हेतु दायर किये गये न्यायालयीन प्रकरणों का यथोचित प्रतिरक्षण करने के संबंध में।

संदर्भ :- इस कार्यालय का पत्र क्रमांक 15476/स्था.अराज./प्र.अ./लो.स्वा.यां.वि./2023 भोपाल दिनांक 11.12.2023

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उपरोक्त विषयान्तर्गत लेख है कि मध्य प्रदेश शासन द्वारा कार्यभारित स्थापना में कार्यरत कर्मचारियों की सेवाकाल में मृत्यु होने पर उनके आश्रितों को अनुकंपा नियुक्ति देने के प्रावधान वर्ष 2000 में समाप्त कर दिए गए थे। म. प्र. शासन सामान्य प्रशासन विभाग के परिपत्र क्रमांक सी, 5-1-2016-1-3 भोपाल दिनांक 31-08-16 (प्रतिलिपि संलग्न) द्वारा पुनः अनुकंपा नियुक्ति दिये जाने के आदेश किये जारी किए हैं। परिपत्र में निम्नानुसार उल्लेख है :-

सामान्य प्रशासन विभाग के परिपत्र क्र. सी 3-12/2013/1-3, दिनांक 29 सितम्बर, 2014 द्वारा शासकीय सेवक की सेवाकाल में मृत्यु होने पर अनुकंपा नियुक्ति के दिशा-निर्देश जारी किये गये हैं। परिपत्र की कण्डिका 11.1 में यह प्रावधान है कि कार्यभारित/आकस्मिकता निधि से वेतन पाने वाले कर्मचारियों के दिवंगत होने पर अनुकंपा नियुक्ति की पात्रता नहीं होगी, परन्तु उनके परिवार के आश्रित नामांकित सदस्य को एकमुश्त रुपये 2.00 लाख (रुपये दो लाख) की राशि अनुकंपा अनुदान के नाम से दी जायेगी। उसमें ग्रेज्यूटी की राशि सम्मिलित नहीं होगी। इस राशि का भुगतान संबंधित विभाग के कार्यभारित/आकस्मिकता के मद के अंतर्गत वेतन मद से किया जावेगा।

2- राज्य शासन द्वारा निर्णय लिया गया है कि कार्यभारित एवं आकस्मिकता निधि से वेतन पाने वाले सेवा के मृतक कर्मचारियों के आश्रितों के लिए अनुकंपा नियुक्ति का प्रावधान विद्यमान व्यवस्था अनुसार किया जाए।


41

अतः सामान्य प्रशासन विभाग के परिपत्र दिनांक 29.09.2014 में जारी दिशा-निर्देशों के मापदण्ड के अनुरूप ही कार्यभारित एवं आकस्मिकता निधि सेवा से वेतन पाने वाले कर्मचारियों के दिवंगत होने पर उनके आश्रित को इसी सेवा की स्थापना के रिक्त पदों पर अनुकंपा नियुक्ति दिये जाने की कार्यवाही सुनिश्चित की जाये।

उक्त परिपत्र की प्रभावशीलता अवधि के संबंध में म.प्र.शासन, सामान्य प्रशासन विभाग के समसंख्यक परिपत्र दिनांक 21.03.2017 (प्रतिलिपि संलग्न) द्वारा निम्नानुसार स्पष्टीकरण भी जारी किया गया है:-

2- इस संबंध में स्पष्ट किया जाता है कि कार्यभारित एवं आकस्मिकता निधि सेवा के कर्मचारियों के लिये अनुकंपा नियुक्ति दिनांक 31.08.2016 से ही प्रभावशील है। इसके पूर्व के प्रकरण दिनांक 29.09.2014 को अनुकंपा नियुक्ति के जारी निर्देशों के प्रावधान अनुसार ही निराकृत किये जायेंगे अर्थात् उन्हें केवल अनुकंपा अनुदान की पात्रता होगी अनुकंपा नियुक्ति की नहीं। तदनुसार कार्यवाही सुनिश्चित की जाये।

परिपत्र दिनांक 21.03.2017 से यह स्पष्ट है कि दिनांक 31.08.2016 के पूर्व सेवाकाल के दौरान मृत हुये कार्यभारित कर्मचारियों के आश्रितों को अनुकंपा नियुक्ति की पात्रता नहीं है तथा उनके लिए म.प्र.शासन, सामान्य प्रशासन विभाग के परिपत्र क्र. सी 3-12/2013/1/3 भोपाल दिनांक 29.09.2014 (प्रतिलिपि संलग्न) में पूर्व से ही निहित प्रावधानों के अनुसार, अनुकंपा अनुदान की राशि रु. 2.00 लाख दिये जाने की व्यवस्था है।

विभाग के संज्ञान में ऐसे अनेको न्यायालयीन प्रकरण आये हैं जिनमें म.प्र.शासन, सामान्य प्रशासन विभाग के परिपत्र दिनांक 31.08.2016 को आधार बनाकर, दिनांक 31.08.2016 के पूर्व मृत हुये कार्यभारित कर्मचारियों के परिजनों द्वारा भी अनुकंपा नियुक्ति प्राप्त करने हेतु मान0 उच्च न्यायालय के समक्ष रिट पिटीशनस दायर की गई हैं। इसमें अनुकंपा अनुदान राशि प्राप्त कर चुके एवं प्राप्त नहीं करने वाले, दोनों ही प्रकार के मृतक कर्मचारियों के आश्रित शामिल हैं।

यह पाया गया है कि कुछ प्रकरणों में मान0 उच्च न्यायालय ने पूर्ण न्यायपीठ (तीन न्यायधीशों की बेंच) द्वारा प्रकरण आर.पी.न. 868/2018 (म0प्र0 शासन एवं अन्य विरुद्ध लक्ष्मण प्रसाद रैकवार) में पारित आदेश दिनांक 04.10.18 में निर्धारित किये गये सिद्धांत के अनुसार, कर्मचारियों के आश्रितों की रिट पिटीशनस/ रिट अपीलों को मान्य कर दिया है। कुछ विभागीय प्रकरण अभी भी मान न्यायालयों के समक्ष विचाराधीन हैं।

इसी प्रकृति के एक विभागीय प्रकरण एस.एल.पी.(सिविल) क्रमांक 6903/2021 (म0प्र0 शासन एवं अन्य विरुद्ध आशीष अवस्थी) में पारित निर्णय दिनांक 18.11.2021 एवं संगत रिव्यू पिटीशन.(सिविल) क्रमांक 512/2022 (आशीष अवस्थी विरुद्ध म0प्र0 शासन एवं अन्य) में पारित निर्णय दिनांक 04.05.2022 में माननीय उच्चतम न्यायालय द्वारा अभिनिर्धारित किया गया है कि "अनुकंपा नियुक्ति के मामलों में पात्रता का

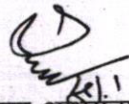
निर्धारण कर्मचारी की मृत्यु के दिनांक को लागू पालिसी के अनुसार ही किया जावेगा। यानि यदि मृत्यु दिनांक को अनुकंपा नियुक्ति के प्रावधान नहीं हो तो आश्रितों को अनुकंपा नियुक्ति प्राप्त नहीं होगी।”

उपरोक्तानुसार विभाग में दिनांक 31.08.2016 के पूर्व मृत हुये कार्यभारित स्थापना के कर्मचारियों के आश्रितों को अनुकंपा नियुक्ति की पात्रता नहीं है।

यही सिद्धांत माननीय उच्चतम न्यायालय द्वारा दिये गये निर्णयों क्रमशः **Indian Bank and Ors. Vs. Promila and Anr., (2020) 2 SCC 729, State of Madhya Pradesh and Ors. Vs. Amit Shrivastava, (2020) 10 SCC 496 एवं Canara Bank Vs. M. Mahesh Kumar (2015) 7 SCC 412** में भी प्रतिपादित किया गया है। माननीय उच्चतम न्यायालय के चारों निर्णयों की छायाप्रतियाँ आपके सुलभ अवलोकनार्थ संलग्न है।

आपको निर्देशित किया जाता है कि विभाग में वर्तमान में विचाराधीन/निर्णित प्रकरणों में माननीय उच्चतम न्यायालय के ऊपर उल्लेखित निर्णयों को संबंधित शासकीय अधिवक्ता के संज्ञान में अनिवार्य रूप से लाये तथा प्रभावी प्रतिरक्षण सुनिश्चित करें। यदि आपके परिक्षेत्र/मंडल/खंड के अधीनस्थ इस प्रकृति के किसी प्रकरण में अनुकंपा नियुक्ति दी गई है तो उसे भी समय रहते न्यायालयीन कार्यवाही करते हुये तत्काल समाप्त करायें।

संलग्न:- उपरोक्तानुसार परिपत्र एवं निर्णय


प्रमुख अभियंता

मध्यप्रदेश शासन
सामान्य प्रशासन विभाग
मंत्रालय

प्र.सं.सी. 5-1/2016/1/3

भोपाल, दिनांक 31-08-2016

प्रति,

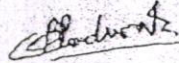
शासन के समस्त विभाग,
अध्यक्ष, राजस्व मण्डल, म.प्र. ग्वालियर,
समस्त विभागाध्यक्ष,
समस्त संभागायुक्त,
समस्त जिला कलेक्टर,
समस्त मुख्य कार्यपालन अधिकारी, जिला पंचायत,
मध्यप्रदेश।

विषय:- कार्यभारित एवं आकस्मिकता निधि सेवा से वेतन पाने वाले कर्मचारियों की सेवाकाल में मृत्यु होने पर अनुकंपा नियुक्ति बाबत।

सामान्य प्रशासन विभाग के परिपत्र क्रमांक सी 3-12/2013/1-3, दिनांक 29 सितम्बर, 2014 द्वारा शासकीय सेवक की सेवाकाल में मृत्यु होने पर अनुकंपा नियुक्ति के दिशा-निर्देश जारी किये गये हैं। परिपत्र की कण्डिका 11.1 में यह प्रावधान है कि कार्यभारित/आकस्मिकता निधि से वेतन पाने वाले कर्मचारियों के दिवंगत होने पर अनुकंपा नियुक्ति की पात्रता नहीं होगी परन्तु उनके परिवार के आश्रित नानाकित सदस्य को एकमुश्त रुपये 2.00 लाख(रुपये दो लाख) की राशि अनुकंपा अनुदान के नाम से दी जाएगी। उसमें ग्रेज्यूटी की राशि सम्मिलित नहीं होगी। इस राशि का गुगतान संबंधित विभाग के कार्यभारित/आकस्मिकता के मद के अंतर्गत वेतन मद से किया जावेगा।

2- राज्य शासन द्वारा निर्णय लिया गया है कि कार्यभारित एवं आकस्मिकता निधि से वेतन पाने वाले सेवा के मृतक कर्मचारियों के आश्रितों के लिए अनुकंपा नियुक्ति का प्रावधान विद्यमान व्यवस्था अनुसार किया जाए। अतः सामान्य प्रशासन विभाग के परिपत्र दिनांक 29.09.2014 में जारी दिश-निर्देशों के मापदण्ड के अनुरूप ही कार्यभारित एवं आकस्मिकता निधि सेवा से वेतन पाने वाले कर्मचारियों के दिवंगत होने पर उनके आश्रित को इसी सेवा की स्थापना के रिक्त पदों पर अनुकंपा नियुक्ति दिये जाने की कार्यवाही सुनिश्चित की जाये।

मध्यप्रदेश के राज्यापाल के नाम से
तथा आदेशानुसार


(सी.बी. पड़वार)

उप सचिव

मध्य प्रदेश शासन
सामान्य प्रशासन विभाग

पृष्ठा.क्रमांक सी 5-1/2016/1/3

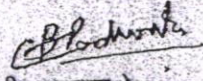
भोपाल, दिनांक, 31.08.2016

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प्रतिलिपि:-

1. प्रमुख सचिव, महामहिम राज्यपाल, राजमवन, मध्यप्रदेश, भोपाल।
2. प्रमुख सचिव, माननीय मुख्यमंत्री जी, मध्यप्रदेश शासन, मंत्रालय भोपाल।
3. माननीय मंत्री/राज्यमंत्री के निज सचिव/निज सहायक, मध्यप्रदेश भोपाल।
4. प्रमुख सचिव (समन्वय), मुख्य सचिव कार्यालय, मंत्रालय, मध्यप्रदेश शासन, भोपाल।
5. अध्यक्ष, मध्यप्रदेश शासक व्यावसायिक परीक्षा मण्डल/अध्यक्ष माध्यमिक शिक्षा मण्डल, भोपाल।
6. महानिदेशक, प्रशासन अकादमी, मध्यप्रदेश, भोपाल।
7. प्रमुख सचिव, मध्यप्रदेश विधानसभा सचिवालय, भोपाल।
8. रजिस्ट्रार जनरल, उच्च न्यायालय, मध्यप्रदेश, जबलपुर।
9. सचिव, लोकायुक्त, मध्यप्रदेश भोपाल।
10. सचिव, मध्यप्रदेश लोक सेवा आयोग, इंदौर।
11. मुख्य निर्वाचन पदाधिकारी/सचिव, राज्य निर्वाचन आयोग, मप्र. भोपाल।
12. महाधिवक्ता/उप महाधिवक्ता, मध्य प्रदेश जबलपुर/ इन्दौर/ ग्वालियर।
13. प्रमुख सचिव/सचिव/उप सचिव, सामान्य प्रशासन विभाग मंत्रालय भोपाल
14. आयुक्त, जनसंपर्क, मध्यप्रदेश, भोपाल।
15. अवर सचिव, मध्य प्रदेश शासन, सामान्य प्रशासन विभाग अधीक्षण/अभिलेख/ पुस्तकालय मंत्रालय, भोपाल।
16. सचिव, मध्यप्रदेश राज्य सूचना आयोग निर्वाचन भवन, द्वितीय मंजिल, भोपाल

की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित।


 (सी. वी. पड़वार)
 उप सचिव
 मध्य प्रदेश शासन
 सामान्य प्रशासन विभाग

क्र. सी. 5-1-2016-1-3

21 मार्च 2017

प्रति,

शासन के समस्त विभाग,
अध्यक्ष सजस्व मंडल, जालंधर,
समस्त विभागाध्यक्ष,
समस्त संभागायुक्त,
समस्त जिला कलेक्टर,
समस्त मुख्य कार्यपाल अधिकारी जिला पंचायत,
मध्य प्रदेश।

विषय:- कार्यभारित एवं आकर्षकता निधि सेवा से वेतन पाने वाले कर्मचारियों की सेवाकाल में मृत्यु होने पर अनुकंपा नियुक्ति बखत।
सन्दर्भ:- इस विभाग का ज्ञाप क्रमांक-सी, 5-1-2016-1-3, दिनांक 11.08.2016

संदर्भित परिपत्र द्वारा कार्यभारित एवं आकर्षकता निधि सेवा से वेतन पाने वाले कर्मचारियों की सेवाकाल में मृत्यु होने पर विभाग के परिपत्र क्रमांक सी, 3-12/2013/1-3, दिनांक 29 सितम्बर, 2014 के मापदण्ड अनुसार दिवंगत कर्मचारी के आश्रित को इसी सेवा की स्थापना के रिक्त पदों पर अनुकंपा नियुक्ति के निर्देश दिये गये हैं।

2- इस संबंध में स्पष्ट किया जाता है कि कार्यभारित एवं आकर्षकता निधि सेवा के कर्मचारियों के लिये अनुकंपा नियुक्ति दिनांक 31.08.2016 से ही प्रभावशाली है। इसके पूर्व के प्रकरण दिनांक 29.09.2014 का अनुकंपा नियुक्ति के लिये निर्देशों के प्रावधान अनुसार ही निराकृत लिये जायेंगे अर्थात् केवल अनुकंपा अनुदान की पावता होगी अनुकंपा नियुक्ति की नहीं। तदनुसार कार्यभारित सन्निहित की जाये।

आ राखिए

सचिव, सामान्य प्रशासन विभाग

मन्त्रालय

पुणे, दिनांक 5.1.2010

मोपाल, दिनांक 21 मार्च 2017

प्रतिभाषक:-

- (1) प्रमुख सचिव, महामहिम राज्यपाल, राजभवन, मध्यप्रदेश, भोपाल
- (2) प्रमुख सचिव, माननीय मुख्यमंत्री जी, मध्यप्रदेश शासन, मंत्रालय, भोपाल।
- (3) माननीय मंत्री/राज्यमंत्री के निज सचिव/निज सहायक, मध्यप्रदेश भोपाल।
- (4) प्रमुख सचिव(समन्वय), मुख्य सचिव कार्यालय, मंत्रालय, मध्यप्रदेश शासन भोपाल।
- (5) अध्यक्ष, मध्यप्रदेश व्यावसायिक परीक्षा मण्डल/अध्यक्ष माध्यमिक शिक्षा मण्डल, भोपाल।
- (6) महानिदेशक, प्रशासन, एकादमी मध्य प्रदेश, भोपाल
- (7) प्रमुख सचिव, मध्य प्रदेश विधान सभा सचिवालय, भोपाल
- (8) रजिस्ट्रार जनरल, उच्च न्यायालय, मध्यप्रदेश, जबलपुर।
- (9) सचिव, लांकायुक्त, मध्यप्रदेश भोपाल।
- (10) सचिव, मध्यप्रदेश लोक सेवा आयोग, इंदौर।
- (11) मुख्य निर्वाचन पदाधिकारी/सचिव, राज्य निर्वाचन आयोग, मप्र, भोपाल।
- (12) महाधिवक्ता/उप महाधिवक्ता, मध्यप्रदेश जबलपुर/इंदौर/ग्वालिअर
- (13) प्रमुख सचिव/सचिव/उप सचिव, सामान्य प्रशासन विभाग, मंत्रालय
- (14) आयुक्त जनसंपर्क संचालनालय, मध्यप्रदेश भोपाल
- (15) अवर सचिव, मध्य प्रदेश शासन, सामान्य प्रशासन विभाग, अधीक्षण/अभिलेख/पुस्तकालय मंत्रालय, भोपाल।
- (16) सचिव, मध्यप्रदेश राज्य सूचना आयोग निर्वाचन मंत्रालय, द्वितीय मंजिल, भोपाल

की ओर सूक्तनार्थ एत आवश्यक कार्यवाही हेतु अप्रपिता।

(सी०बी० प्रजापति)

उप सचिव

मध्य प्रदेश शासन

मंत्रालय, भोपाल

मध्यप्रदेश शासन
सामान्य प्रशासन विभाग
मंत्रालय

क्रमांक सी 3-12/2013/1/3,
प्रति,

भोपाल, दिनांक 29 सितम्बर, 2014

शासन के समस्त विभाग,
अध्यक्ष, राजस्व मण्डल, म.प्र. ग्वालियर,
समस्त विभागाध्यक्ष,
समस्त संभागायुक्त,
समस्त जिला कलेक्टर,
समस्त मुख्य कार्यपालन अधिकारी, जिला पंचायत,
मध्यप्रदेश.

विषय—शासकीय सेवक की सेवाकाल में मृत्यु होने पर अनुकंपा नियुक्ति बाबत।

संदर्भ—सामान्य प्रशासन विभाग का ज्ञाप क्रमांक सी 3-7/2000/3/1 दिनांक 22.01.2007, क्र. सी 3-4/06/3/1 दि. 11.07.06 एवं 23.02.08, क्र. सी 3-4/1/3/06, दि. 18.08.08, क्र. 6-3-13/1/3/08 दि. 09.01.09 क्र. सी 3-17/09/1/3, दि. 01.07.10, क्र. सी 3-11/1/3/11 दि. 25.08.10, क्र. 6-3/17/1/3/2010, दि. 11.01.2011, दि. 28.02.11 एवं क्र. सी 3-7/1/3/2011, दि. 28.06.11, 20.07.11, क्र. सी 3-7/2012/3/एक, दि. 02.06.12, क्र. सी 3-12/13/3/1, दि. 29.06.13 तथा वित्त विभाग का ज्ञाप क्र. 1035/896/07/नियम-चार, दिनांक 21.08.07.

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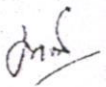
संदर्भित ज्ञापनों में उल्लेखित अनुकंपा नियुक्ति के निर्देशों में आशिक सशोधन करते हुए राज्य शासन एतद्वारा निम्नानुसार एकजाई निर्देश प्रसारित करता है :-

1. अनुकंपा नियुक्ति की परिस्थिति

1.1 किसी शासकीय सेवक की सेवाकाल में मृत्यु होने पर उनके आश्रित एक सदस्य को अनुकंपा नियुक्ति दी जावेगी।

2. अनुकंपा नियुक्ति के लिए आश्रित सदस्य से तात्पर्य (क्रमानुसार)

2.1 दिवंगत शासकीय सेवक की पत्नी, अथवा पूर्णतः आश्रित पति।



- 2.2 मृतक शासकीय सेवक के आश्रित पति/पत्नी द्वारा योग्यता न रखने अथवा स्वयं अनुकंपा नियुक्ति न लेना चाहे तो उसके द्वारा नामांकित पुत्र या अविवाहित पुत्री।
- 2.3 ऐसी विधवा अथवा तलाकशुदा पुत्री, जो दिवंगत शासकीय सेवक की मृत्यु के समय उस पर पूर्णतः आश्रित होकर उसके साथ रह रही हो अथवा उपरोक्त पात्र सदस्य न होने की स्थिति में विधवा पुत्रवधु जो शासकीय सेवक की मृत्यु के समय उस पर पूर्णतः आश्रित होकर उनके साथ रह रही हो।
- 2.4 दिवंगत शासकीय सेवक की संतान सिर्फ पुत्री/पुत्रियां हों और वह विवाहित हो तो दिवंगत शासकीय सेवक के आश्रित पति/पत्नी द्वारा नामांकित विवाहित पुत्री।

यह स्पष्ट किया जाता है कि मृतक शासकीय सेवक के आश्रित पति/पत्नी जीवित होने पर ही विवाहित पुत्री को अनुकंपा नियुक्ति की पात्रता होगी। (ऐसी अनुकंपा नियुक्ति पाने वाली पुत्री को शासकीय सेवक के आश्रित पति/पत्नी के पालन-पोषण की जिम्मेदारी का शपथ पत्र देना होगा)

- 2.5 यदि मृतक शासकीय सेवक की प्राकृतिक संतान न हो तो ऐसी दत्तक संतान जिन्हें शासकीय सेवक (दम्पति) द्वारा शासकीय सेवक के जीवित रहते हुए वैधानिक रूप से गोद लिया हो।
- 2.6 अविवाहित दिवंगत शासकीय सेवक के भाई अथवा अविवाहित बहन को दिवंगत शासकीय सेवक के माता-पिता की अनुशंसा के आधार पर। परन्तु अविवाहित दिवंगत शासकीय सेवक के माता-पिता भी जीवित न हो तो उनके आश्रित छोटे अविवाहित भाई/बहन को उनकी आपसी सहमति के आधार पर अनुकंपा नियुक्ति दी जाएगी।
- 2.7 मृतक शासकीय सेवक पति/पत्नी दोनों में से कोई जीवित न हो तो उसके परिवार के सभी सदस्यों द्वारा एकमत होकर शपथ पत्र पर नामांकित कोई एक सदस्य। परिवार में सहमति न होने पर संबंधित जिले के कलेक्टर द्वारा यह निर्णय लिया जावेगा कि किसे अनुकंपा नियुक्ति दी जावे।

यह स्पष्ट किया जाता है कि उपरोक्त सभी कंडिकाओं के परिप्रेक्ष्य में मृतक शासकीय सेवक के आश्रित पति/पत्नी के पालन-पोषण की जिम्मेदारी का शपथ पत्र अनुकंपा नियुक्ति के पात्र अभ्यर्थी से अनिवार्यतः लिया जावेगा।

3. अनुकंपा नियुक्ति की पात्रता की शर्तें

- 3.1 दिवंगत शासकीय सेवक के परिवार का सदस्य अनुकंपा नियुक्ति हेतु तभी पात्र होगा जब शासकीय सेवा में नियुक्ति के लिए आवश्यक अर्हता धारण करता हो।



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- 3.2 सभी प्रकार के अनुकंपा नियुक्ति के प्रकरणों में शासकीय सेवक की मृत्यु दिनांक से 07 (सात) वर्ष तक पद उपलब्ध होने पर ही उसके आश्रित को अनुकंपा नियुक्ति की पात्रता होगी।

परन्तु मृत शासकीय सेवक की यदि प्रथम संतान मृत्यु की तिथि को अवयस्क होवे तो केवल ऐसी प्रथम संतान को वयस्क होने की तिथि से एक वर्ष तक अनुकंपा नियुक्ति अन्यथा पात्र होने की दशा में प्रदान की जा सकेगी।

- 3.3 07 वर्ष से अधिक अवधि से लापता कर्मचारियों के आश्रितों को अनुकंपा नियुक्ति इस शर्त पर देय होगी कि संबंधित परिवार द्वारा कर्मचारी के लापता होने की पुलिस में एफ.आई.आर. दर्ज की गई हो एवं पुलिस द्वारा कर्मचारी का कोई अता-पता नहीं होने पर प्रतिवेदन दिया गया है। 07 (सात) वर्ष की अवधि की गणना एफ.आई.आर. दर्ज होने के दिनांक से की जावेगी।

4. अनुकंपा नियुक्ति के लिए अपात्रता

निम्नलिखित स्थिति में अनुकंपा नियुक्ति की पात्रता नहीं होगी :-

- 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)।
- 4.2 यदि किसी शासकीय सेवक की मृत्यु अधिवार्षिकी आयु पूर्ण करने के बाद सेवावृद्धि, पुनर्नियुक्ति/सविदा नियुक्ति के दौरान होती है।
- 4.3 ऐसे दिवंगत व्यक्ति जो केन्द्र शासन या राज्य सरकार या उसके स्वत्वाधीन/नियंत्रणाधीन किसी निगम/मण्डल/आयोग द्वारा पदच्युत व्यक्ति हो।
- 4.4 सार्वजनिक उपक्रम के मृत कर्मियों के परिवार के सदस्यों को शासन अंतर्गत अनुकंपा नियुक्ति की पात्रता नहीं होगी।
- 4.5 यदि दिवंगत शासकीय सेवक, प्रशिक्षु, तदर्थ अथवा सविदा के आधार पर नियुक्त किया गया हो।
- 4.6 दिवंगत शासकीय सेवक के परिवार के बिन्दु क्रमांक 2.1 से 2.7 में दर्शाये पूर्णतः आश्रित सदस्य को छोड़कर अन्य को अनुकंपा नियुक्ति की पात्रता नहीं होगी।
- 4.7 कार्यालय प्रमुख/नियुक्ति प्राधिकारी इस बात को सुनिश्चित करने के लिये व्यक्तिगत रूप से जिम्मेदार होंगे कि दिवंगत शासकीय सेवक के परिवार को वास्तव में तात्कालिक सहायता के रूप में अनुकंपा नियुक्ति की पात्रता है।

Amal

5. अनुकंपा नियुक्ति के पद

निम्न पदों पर अनुकंपा नियुक्ति दी जा सकेगी :-

- 5.1 अनुकंपा नियुक्ति अभ्यर्थी द्वारा धारित योग्यता एवं अर्हता के आधार पर सीधी भरती के रिक्त निम्नतर पद पर दी जावेगी—यथा सहायक ग्रेड-3 तथा समकक्ष पद, संविदा शाला शिक्षक एवं रूपये 3500-5200 (5200-20200+2100 ग्रेड पे) तक वेतनमान वाले अन्य कार्यपालिक पदों (लोक सेवा आयोग के कार्यक्षेत्र के पदों को छोड़कर) पर भी अनुकंपा नियुक्ति दी जा सकेगी, इनमें वार्डबॉय, पटवारी, वाणिज्यिक कर विभाग के अधीन पंजीयन लिपिक (कार्यपालिक) स्वास्थ्य विभाग के विभिन्न पद, ड्रायवर, तकनीकी पद भी शामिल हैं, बशर्ते आवश्यक तकनीकी योग्यता रखता हो।
- 5.2 अनुकंपा नियुक्ति के अभ्यर्थियों को जेल विभाग में प्रहरी एवं आबकारी तथा परिवहन विभाग में आरक्षक के पद पर शारीरिक रूप से सक्षम होने एवं निर्धारित शैक्षणिक योग्यता धारण करने पर अनुकंपा नियुक्ति दी जा सकेगी।
- 5.3 तृतीय श्रेणी के पद पर अनुकंपा नियुक्ति प्राप्त करने वाले व्यक्ति को दो वर्ष की परिवीक्षा पर नियुक्ति दी जाये।
- 5.4 तृतीय श्रेणी की योग्यता न होने पर एवं चतुर्थ श्रेणी के पद की अर्हता होने पर सीधी भरती के रिक्त चतुर्थ श्रेणी के पद पर दी जा सकेगी।

6. अनुकंपा नियुक्ति की आवश्यक अर्हताएं तथा शिथिलीकरण

- 6.1 मृतक शासकीय कर्मों के ऐसे आश्रित को भी अनुकंपा नियुक्ति दी जा सकेगी, जिसने मध्यप्रदेश से बाहर की शैक्षणिक संस्था से परीक्षा उत्तीर्ण कर, शैक्षणिक योग्यता धारित की हो।
- 6.2 वित्त विभाग के ज्ञाप क्रमांक एल 17-2/94/ब-7/चार, दिनांक 30.09.94 द्वारा रिक्त पदों को केवल अतिशेष कर्मियों से भरने संबंधी निर्देश एवं वित्त विभाग द्वारा समय-समय पर स्वीकृत पदों में अतिशेष कर्मचारियों से भरती की शर्त अनुकंपा नियुक्ति के मामलों में लागू नहीं होगी, अर्थात् इन पदों पर अनुकंपा नियुक्ति दी जा सकेगी।
- 6.3 भरती नियमों में प्रावधानित चयन प्रक्रिया तथा रोजगार कार्यालय में पंजीयन संबंधी शर्त से छूट रहेगी।
- 6.4 अधिकतम आयु सीमा संबंधी शर्त मृतक शासकीय सेवक की पत्नी के मामले में पूर्णतः शिथिल रहेगी। साथ ही, मृतक शासकीय सेवक के आश्रित को अनुकंपा

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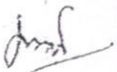
नियुक्ति देने के संबंध में अधिकतम आयु सीमा में पांच वर्ष की छूट दी जाएगी।
अर्थात् किसी भी प्रवर्ग के लिए $40 + 5 = 45$ वर्ष से अधिक नहीं होगी।

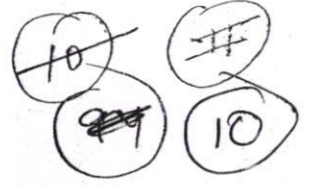
6.5 दिवंगत शासकीय सेवक के आश्रित को सहायक ग्रेड-3 के पद पर अनुकंपा नियुक्ति के लिये कम्प्यूटर डिप्लोमा तथा कम्प्यूटर टायपिंग दक्षता प्रमाण पत्र परीक्षा मान्यता प्राप्त संस्था से उत्तीर्ण किये जाने हेतु 3 वर्ष का समय दिया जावेगा। तीन वर्ष में भी वांछित परीक्षाएं उत्तीर्ण न करने पर संबंधित कर्मचारी द्वारा परीक्षाएं उत्तीर्ण करने के प्रयासों और टायपिंग क्षमता जो अर्जित की गई हो, को देखते हुए नियोक्ता अधिकारी द्वारा एक वर्ष की अवधि और बढ़ाई जा सकती है। इस अवधि के व्यतीत होने पर भी संबंधित कर्मचारी द्वारा वांछित परीक्षाएं उत्तीर्ण न करने पर उनकी सेवाएं समाप्त की जा सकेंगी।

6.6 मध्यप्रदेश सिविल सेवा (सेवा की सामान्य शर्तें) नियम, 1961 के नियम 6 के उप नियम (6) जिसमें प्रावधान है कि कोई भी उम्मीदवार जिसकी दो से अधिक संतान जीवित होने पर एक का जन्म यदि 26 जनवरी, 2001 को या उसके पश्चात् हुआ हो, किसी भी शासकीय सेवा या पद पर नियुक्ति के लिये अपात्र माना जावेगा, से अनुकंपा नियुक्ति के प्रकरणों में छूट रहेगी।

7. अनुकंपा नियुक्ति की प्रक्रिया

- 7.1 अनुकंपा नियुक्ति के लिए आवेदन पत्र संलग्न परिशिष्ट एक में दर्शाए प्रपत्र में उस कार्यालय प्रमुख/विभाग प्रमुख जिसमें दिवंगत शासकीय सेवक अपनी मृत्यु के पूर्व कार्यरत था, को प्रस्तुत किया जावेगा।
- 7.2 अनुकंपा नियुक्ति के आवेदनों के निपटारे हेतु ऐसे आवेदकों की एक सूची संबंधित कार्यालय/विभाग में बनाई जावेगी एवं इसका क्रम दिवंगत शासकीय सेवक की मृत्यु के दिनांक से निर्धारित किया जावेगा, अर्थात् जो शासकीय सेवक पहले दिवंगत हुआ है उसके आश्रितों को पहले अनुकंपा नियुक्ति दी जावेगी।
- 7.3 अनुकंपा नियुक्ति यथा संभव उसी कार्यालय या विभाग में दी जावेगी, जिसमें दिवंगत शासकीय सेवक निधन के पूर्व नियोजित था।
- 7.4 यदि नियमित वेतनमान के पद उपलब्ध हो, तो मृतक शासकीय सेवक के आश्रितों के पात्रतानुसार अनुकंपा नियुक्ति नियमित पद पर ही दी जावेगी।
- 7.5 यदि उस कार्यालय में, जिसमें कि दिवंगत शासकीय सेवक मृत्यु के पूर्व नियोजित था, अनुकंपा नियुक्ति हेतु कोई रिक्त पद उपलब्ध न हो तो अनुकंपा नियुक्ति हेतु आवेदन पत्र विभागाध्यक्ष को भेजा जाएगा। विभागाध्यक्ष अपने अधीनस्थ किसी भी जिले या कार्यालय में रिक्त पद पर पात्रतानुसार अनुकंपा नियुक्ति देंगे।





- 7.6 अनुकंपा नियुक्ति देने के लिए वहीं अधिकारी सक्षम होगा जो सामान्य परिस्थिति में तृतीय एवं चतुर्थ श्रेणी, जैसा भी प्रकरण हो, के पदों पर नियुक्ति के लिए सक्षम हो या जैसा संबंधित भर्ती नियमों में प्रावधानित हो ।
- 7.7 यदि उस विभागाध्यक्ष के अधीन पद खाली नहीं है एवं उसी विभाग के अंतर्गत अन्य विभागाध्यक्ष कार्यालयों में पद रिक्त होने पर संबंधित विभाग के सचिव/प्रमुख सचिव रिक्ति वाले विभागाध्यक्ष को रिक्त पद पर पात्रतानुसार अनुकंपा नियुक्ति के निर्देश दे सकेंगे ।
- 7.8 यदि विभाग के किसी भी विभागाध्यक्ष या अन्य कार्यालयों में पद खाली न हो एवं दिवंगत परिवार ने पैरा 10.1 अनुसार कोई विकल्प नहीं दिया हो तो विभाग में पद रिक्त न होने का प्रमाण-पत्र देकर प्रकरण उस जिले के कलेक्टर को भेजा जावेगा जिस जिले में दिवंगत शासकीय सेवक मृत्यु पूर्व पदस्थ था ।
- 7.9 शासकीय अमले में आगामी 5 वर्षों में 30 प्रतिशत कमी करने की योजना के अंतर्गत जो पद समाप्त हो चुके हैं या किए जाना हैं, वे अनुकंपा नियुक्ति के लिए उपलब्ध नहीं होंगे और केवल स्पष्ट रूप से रिक्त नियमित पद पर ही अनुकंपा नियुक्ति की जाएगी। साथ ही, आरक्षण रॉस्टर अनुसार संबंधित प्रवर्ग के रिक्त पद पर ही अनुकंपा नियुक्ति दी जाएगी।

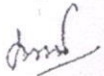
8. कलेक्टर कार्यालय में प्राप्त आवेदन पत्रों का निराकरण

- 8.1 जिला कलेक्टर उक्त कंडिका 7.8 के तहत प्राप्त प्रकरणों को संकलित कर जिले के उन कार्यालयों को अग्रेषित करेंगे, जहां अनुकंपा नियुक्ति के लिए नियमित पद उपलब्ध हैं । नियमित पद उपलब्ध होने पर अनुकंपा नियुक्ति का आदेश जारी किया जायेगा । यदि नियमित पद उपलब्ध नहीं है, तो आवेदक को इसकी सूचना दी जायेगी और उसे संविदा शाला शिक्षक के पद हेतु संबंधित कलेक्टर को आवेदन पत्र प्रस्तुत करने की सलाह दी जाएगी।
- 8.2 प्रत्येक जिला कार्यालय में उस जिले के सभी विभागों में रिक्त पदों की एक सूची संधारित की जावेगी, जो वर्ष में दो बार अद्यतन की जावेगी। इसी प्रकार जिला कार्यालय में संविदा शाला शिक्षक के रिक्त पदों की अद्यतन सूची रखी जावेगी ।
- 8.3 यदि आवेदक संविदा शाला शिक्षक के पद पर नियुक्ति का इच्छुक है, तो संबंधित जिले के कलेक्टर को आवेदन-पत्र प्रस्तुत कर सकेगा ।
- 8.4 कलेक्टर बिन्दु क्रमांक 8.3 के तहत प्राप्त अनुकंपा नियुक्ति के आवेदक का सत्यापन उस कार्यालय प्रमुख/विभाग प्रमुख जहां दिवंगत शासकीय सेवक अपनी मृत्यु के पूर्व कार्यरत था, से करवाएगा ।
- 8.5 सत्यापन उपरांत बिन्दु क्रमांक 8.2 में संधारित सूची में उपलब्ध रिक्त स्थान से आवेदक के चाहेनुसार स्थान पर नियुक्ति हेतु कलेक्टर संबंधित मुख्य कार्यपालन अधिकारी, जिला पंचायत को नियुक्ति प्रदान करने के निर्देश दे सकेगा।

Ans

- 8.6 बिन्दु क्रमांक 8.3 से 8.5 की कार्यवाही जिला कलेक्टर द्वारा एक माह में पूर्ण की जावेगी।
- 8.7 संबंधित नगरीय एवं ग्रामीण निकाय के नियुक्तकर्ता अधिकारी द्वारा कलेक्टर से प्राप्त निर्देशानुसार अधिकतम एक माह में अनुकंपा नियुक्ति के आदेश जारी करना सुनिश्चित किया जायेगा।
9. पद उपलब्ध न होने/संविदा शाला शिक्षक हेतु आवेदन न देने पर कार्यवाही
- 9.1 अनुकंपा नियुक्ति हेतु नियमित पद रिक्त न होने एवं आवेदक द्वारा संविदा शाला शिक्षक के पद पर आवेदन न देने या आवेदक द्वारा आवेदन करने के बाद संविदा शाला शिक्षक के भी रिक्त पद उपलब्ध न होने पर आवेदक के पास यह विकल्प होगा कि वह 7 वर्ष की अवधि तक प्रतीक्षा करने का आवेदन दें या इस आशय की लिखित सहमति दें कि दिवंगत शासकीय सेवक द्वारा अंतिम आहरित वेतन अनुकंपा नियुक्ति के स्थान पर दिवंगत शासकीय सेवक के पति/पत्नी या उनके न होने पर परिवार के सदस्यों की सर्वसम्मति से नामांकित आश्रित सदस्य को दिया जावे, तो इस आधार पर दिया जाने वाला अंतिम वेतन 05 (पांच) वर्षों तक अथवा दिवंगत शासकीय सेवक की अधिवार्षिकी आयु पर सेवानिवृत्ति की अवधि तक जो भी पहले हो, तक जारी रखा जावेगा। यह राशि संबंधित विभाग/कार्यालय द्वारा वेतन मद से आहरित की जावेगी।
- 9.2 सेवा में रहते हुए एक ही दुर्घटना में अथवा उसके फलस्वरूप यदि किसी शासकीय सेवक की एवं उसके पति/पत्नी दोनों की मृत्यु हो जाती है और उनका एक या एक से अधिक आश्रित सदस्य 21 वर्ष से कम आयु का हो, तो उसे पांच वर्ष तक दिवंगत शासकीय सेवक की अधिवार्षिकी आयु पर सेवानिवृत्ति दिनांक से अप्रभावित रहते हुए, शासकीय सेवक को दिये जाने वाला अंतिम आहरित वेतन में से पेंशन की राशि घटाकर वेतन दिया जाएगा।
- 9.3 यदि शासकीय सेवक के पति/पत्नी की मृत्यु पहले ही हो चुकी हो, तो शासकीय सेवक की मृत्यु होने के दिनांक से उपरोक्त कंडिका 9.2 के प्रावधान लागू होंगे।
- 9.4 उपरोक्त कंडिका 9.2 एवं 9.3 के प्रकरणों में आश्रित सदस्य को अनुकंपा नियुक्ति की पात्रता इन नियमों के तहत बनी रहेगी, जो उसके आवेदन प्रस्तुत करने पर दी जा सकेगी। आश्रितों को अनुकंपा नियुक्ति अथवा अन्य रोजगार प्राप्त होने पर नियम 9.2 अथवा 9.3 की सुविधा समाप्त हो जावेगी एवं नियमानुसार परिवार पेंशन की पात्रता यथावत् रहेगी।

उपरोक्त कंडिका 9.2, 9.3 एवं 9.4 के प्रावधान राज्य शासन के अधिकारियों एवं कर्मचारियों के साथ-साथ अखिल भारतीय सेवाओं के मध्यप्रदेश केडर के अधिकारियों पर भी लागू होंगे।



- 8.6 बिन्दु क्रमांक 8.3 से 8.5 की कार्यवाही जिला कलेक्टर द्वारा एक माह में पूर्ण की जावेगी।
- 8.7 संबंधित नगरीय एवं ग्रामीण निकाय के नियुक्तकर्ता अधिकारी द्वारा कलेक्टर से प्राप्त निर्देशानुसार अधिकतम एक माह में अनुकंपा नियुक्ति के आदेश जारी करना सुनिश्चित किया जायेगा।

9. पद उपलब्ध न होने/संविदा शाला शिक्षक हेतु आवेदन न देने पर कार्यवाही

- 9.1 अनुकंपा नियुक्ति हेतु नियमित पद रिक्त न होने एवं आवेदक द्वारा संविदा शाला शिक्षक के पद पर आवेदन न देने या आवेदक द्वारा आवेदन करने के बाद संविदा शाला शिक्षक के भी रिक्त पद उपलब्ध न होने पर आवेदक के पास यह विकल्प होगा कि वह 7 वर्ष की अवधि तक प्रतीक्षा करने का आवेदन दें या इस आशय की लिखित सहमति दें कि दिवंगत शासकीय सेवक द्वारा अंतिम आहरित वेतन अनुकंपा नियुक्ति के स्थान पर दिवंगत शासकीय सेवक के पति/पत्नी या उनके न होने पर परिवार के सदस्यों की सर्वसम्मति से नामांकित आश्रित सदस्य को दिया जावे, तो इस आधार पर दिया जाने वाला अंतिम वेतन 05 (पांच) वर्षों तक अथवा दिवंगत शासकीय सेवक की अधिवार्षिकी आयु पर सेवानिवृत्ति की अवधि तक जो भी पहले हो, तक जारी रखा जावेगा। यह राशि संबंधित विभाग/कार्यालय द्वारा वेतन मद से आहरित की जावेगी।
- 9.2 सेवा में रहते हुए एक ही दुर्घटना में अथवा उसके फलस्वरूप यदि किसी शासकीय सेवक की एवं उसके पति/पत्नी दोनों की मृत्यु हो जाती है और उनका एक या एक से अधिक आश्रित सदस्य 21 वर्ष से कम आयु का हो, तो उसे पांच वर्ष तक दिवंगत शासकीय सेवक की अधिवार्षिकी आयु पर सेवानिवृत्ति दिनांक से अप्रभावित रहते हुए, शासकीय सेवक को दिये जाने वाला अंतिम आहरित वेतन में से पेंशन की राशि घटाकर वेतन दिया जाएगा।
- 9.3 यदि शासकीय सेवक के पति/पत्नी की मृत्यु पहले ही हो चुकी हो, तो शासकीय सेवक की मृत्यु होने के दिनांक से उपरोक्त कंडिका 9.2 के प्रावधान लागू होंगे।
- 9.4 उपरोक्त कंडिका 9.2 एवं 9.3 के प्रकरणों में आश्रित सदस्य को अनुकंपा नियुक्ति की पात्रता इन नियमों के तहत बनी रहेगी, जो उसके आवेदन प्रस्तुत करने पर दी जा सकेगी। आश्रितों को अनुकंपा नियुक्ति अथवा अन्य रोजगार प्राप्त होने पर नियम 9.2 अथवा 9.3 की सुविधा समाप्त हो जावेगी एवं नियमानुसार परिवार पेंशन की पात्रता यथावत् रहेगी।

उपरोक्त कंडिका 9.2, 9.3 एवं 9.4 के प्रावधान राज्य शासन के अधिकारियों एवं कर्मचारियों के साथ-साथ अखिल भारतीय सेवाओं के मध्यप्रदेश केडर के अधिकारियों पर भी लागू होंगे।

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- 9.5 कंडिका 9.1 एवं 9.2 के प्रकरणों में 5 वर्ष अथवा सेवानिवृत्ति की अवधि के पश्चात् मृतक कर्मचारी के नामांकित सदस्य को नियमानुसार परिवार पेंशन की पात्रता होगी, परन्तु अनुकंपा नियुक्ति की पात्रता नहीं होगी। परिवार पेंशन पर राहत देय होगी।
- 9.6 बिन्दु क्रमांक 9.1 एवं 9.2 का यह लाभ तभी दिया जावेगा जब मृतक का परिवार का कोई सदस्य अनुकंपा नियुक्ति के लिए पात्रता रखता हो।
- 9.7 बिन्दु क्रमांक 9.1 एवं 9.2 अनुसार अंतिम आहरित वेतन की सहमति देने की स्थिति में प्रकरण तदनुसार स्वीकृति हेतु कलेक्टर द्वारा संबंधित विभागाध्यक्ष/कार्यालय को जहां से अनुकंपा नियुक्ति का आवेदन प्राप्त हुआ है, तत्काल आवश्यक कार्यवाही हेतु भेजा जावेगा।
- 9.8 जिन प्रकरणों में आवेदकों की योग्यता चतुर्थ श्रेणी के पद की भी नहीं है अथवा ऐसे प्रकरण जिनमें पात्रता केवल चतुर्थ श्रेणी की है उनमें इन वर्ग के पद उपलब्ध न होने पर अनुकंपा नियुक्ति के बदले एकमुश्त दो लाख रुपये की राशि संबंधित विभाग/कार्यालय द्वारा प्रदान की जाकर अनुकंपा नियुक्ति का प्रकरण निराकृत माना जाएगा। यह राशि संबंधित विभाग/कार्यालय द्वारा वेतन मद से आहरित की जावेगी।
- 9.9 अनुकंपा नियुक्ति हेतु नियमित पद उपलब्ध न होने एवं संविदा शाला शिक्षक के पद पर अनुकंपा नियुक्ति हेतु आवेदन पत्र न देने तथा बिन्दु क्रमांक 9.1 अनुसार 7 वर्ष तक प्रतीक्षा करने की सहमति भी नहीं देने की स्थिति में उनके नियुक्ति संबंधी आवेदन व अंतिम वेतन प्राप्त करने का क्लेम, विभाग/कार्यालय द्वारा निरस्त कर प्रकरण निराकृत माने जावेंगे।
- 9.10 समस्त कलेक्टर द्वारा बिन्दु क्रमांक 9.9 के अनुकंपा नियुक्ति के आवेदन निरस्त किये जाने वाले प्रकरण संबंधित विभाग/कार्यालय को तत्काल भेजना सुनिश्चित करेंगे।

10. वचन पत्र/शपथ पत्र

- 10.1 दिवंगत शासकीय सेवक के परिवार को शपथ पत्र पर उस सदस्य का नाम देना होगा, जिसकी अनुकंपा नियुक्ति की जाना है।
- 10.2 दिवंगत शासकीय सेवक के परिवार का कोई भी सदस्य कंडिका-4 के अनुसार अपात्रता नहीं रखता है, इस बाबत अनुकंपा नियुक्ति के आवेदक से शपथ-पत्र लिया जाए।
- 10.3 दिवंगत शासकीय सेवक के आश्रित को अनुकंपा नियुक्ति देने की स्थिति में उसे पात्र अभ्यर्थी से नियुक्ति के पूर्व इस आशय का शपथ-पत्र लिया जायेगा कि वह दिवंगत शासकीय सेवक के परिवार के अन्य सदस्यों का समुचित भरण पोषण

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करेगा तथा बाद में किसी भी समय यदि यह प्रमाणित हो जाए कि उसके परिवार के सदस्यों को अनदेखा किया जा रहा है अथवा उनका सही ढंग से भरण पोषण नहीं किया जा रहा है, तो उसकी नियुक्ति समाप्त की जा सकेगी।

11. कार्यभारित आकस्मिकता एवं दैनिक वेतन भोगियों हेतु प्रावधान

- 11.1 कार्यभारित/आकस्मिकता निधि से वेतन पाने वाले एवं दैनिक वेतनभोगी कर्मचारियों के दिवंगत होने पर अनुकंपा नियुक्ति की पात्रता नहीं होगी परन्तु उनके परिवार के आश्रित नामांकित सदस्य को एकमुश्त रूपये 2.00 लाख (रूपये दो लाख) की राशि अनुकंपा अनुदान के नाम से दी जाएगी। उसमें ग्रेज्यूटी की राशि सम्मिलित नहीं होगी। इस राशि का भुगतान संबंधित विभाग के कार्यभारित/आकस्मिकता के मद के अंतर्गत वेतन मद से किया जावेगा।

12. प्रभावशीलता

- 12.1 यह निर्देश इस विभाग के ज्ञाप क्रमांक सी 3-7/2000/3/1, दिनांक 22.01.2007 एवं ज्ञाप क्रमांक सी 3-4/1/3/06, दिनांक 18.08.2008 तथा इसके संदर्भ में समय-समय पर जारी निर्देशों को एकजोड़ कर जारी किये जा रहे हैं। अतः अब अनुकंपा नियुक्ति के प्रकरणों का निराकरण इस परिपत्र के प्रावधानों के तहत ही किया जाए। इस विभाग के ज्ञाप दिनांक 22.01.2007 के पूर्व जारी परिपत्रों को निरस्त माना जाए।
- 12.2 इस परिपत्र के जारी होने की तिथि से पूर्व अस्वीकृत/निराकृत प्रकरणों पर पुनर्विचार नहीं किया जाएगा।
- 12.3 कड़िका 9.8 एवं 11.1 में बड़ी हुई राशि यह परिपत्र जारी होने के दिनांक से प्रभावशील होगी।

13. अन्य महत्वपूर्ण बिन्दु

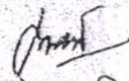
- 13.1 आवेदक को एक बार अनुकंपा नियुक्ति दिये जाने के पश्चात् किसी अन्य पद पर पुनः नियुक्ति नहीं दी जावेगी।
- 13.2 अनुकंपा के आधार पर की गई नियुक्ति किसी दूसरे व्यक्ति को अंतरित नहीं की सकेगी।
- 13.3 नियुक्ति के पूर्व चिकित्सीय परीक्षण नियमानुसार कराया जावेगा परन्तु दिवंगत शासकीय सेवक की धर्मपत्नी को अनुकंपा नियुक्ति देने के मामलों में नियुक्ति के पूर्व चरित्र सत्यापन (पुलिस वेरिफिकेशन) कराने की शर्त नहीं रहेगी। किन्तु पत्नी के अलावा अन्य आश्रित सदस्य को चरित्र सत्यापन की प्रत्याशा में अनुकंपा नियुक्ति इस शर्त के साथ दी जावेगी कि नियुक्ति के पश्चात् यदि यह पाया जाता



है कि संबंधित व्यक्ति शासकीय सेवा में रखे जाने के योग्य नहीं है, तो उसे दी गई अनुकंपा नियुक्ति समाप्त की जा सकेगी।

- 13.4 सामान्य प्रशासन विभाग के परिपत्र क्रमांक सी 3-7/2000/3/1, दिनांक 23 जुलाई, 2001 एवं दिनांक 22 नवंबर 2002 द्वारा जारी निर्देश जहां साम्प्रदायिक दंगों में पीड़ित परिवार के कमाने वाले सदस्य की मृत्यु हो जाने पर उसके आश्रित परिवार के एक सदस्य को शासकीय सेवा में अनुकंपा नियुक्ति देने से है, यथावत रहेंगे।
- 13.5 बैकलॉग पदों की सीधी भर्ती करने के पूर्व विभाग/कार्यालय यह सुनिश्चित करेंगे कि जिन पदों पर बैकलॉग के पदों से सीधी भर्ती की प्रक्रिया जारी है, उन पदों में अनुकंपा नियुक्ति योग्य पदों पर सर्वप्रथम अनुकंपा नियुक्ति इन वर्गों के प्रकरणों पर विचार किया जावेगा। अनुकंपा नियुक्ति के इन वर्गों के प्रकरण समाप्त होने के पश्चात् ही शेष बैकलॉग पदों पर सीधी भर्ती की जा सकेगी।
- 13.6 जिन विभागों में एवं उनके अधीनस्थ कार्यालयों में अनुकंपा नियुक्ति के पद रिक्त हैं, वे समस्त विभाग उनके अधीन रिक्त पदों पर इन निर्देशों के जारी होने के दिनांक से एक माह में अनिवार्य रूप से अनुकंपा नियुक्ति के प्रकरणों का इस निर्देशों के तहत निपटारा सुनिश्चित करेंगे।
- 13.7 विभागों द्वारा प्रेषित एवं जिले में लंबित अनुकंपा नियुक्ति के प्रकरणों में जिला कलेक्टरों द्वारा एक माह की समय-सीमा में उपरोक्तानुसार कार्यवाही सुनिश्चित की जावे।
- 13.8 किसी भी स्तर पर अनुकंपा नियुक्ति के लंबित प्रकरणों में समय सीमा का पालन न करने या उनके निराकरण में लापरवाही करने की शिकायत प्राप्त होने पर जिम्मेदारों के विरुद्ध कठोर कार्यवाही की जावेगी।

मध्यप्रदेश के राज्यपाल के नाम से
तथा आदेशानुसार


(आर.के. गजभिये)

उप सचिव

मध्यप्रदेश शासन
सामान्य प्रशासन विभाग

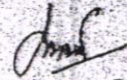
16

पृष्ठां. क्रमांक सी 3-12/2013/1/3,
प्रतिलिपि:-

भोपाल, दिनांक 29 सितम्बर, 2014

1. प्रमुख सचिव, माननीय मुख्यमंत्री जी, मध्यप्रदेश शासन, मंत्रालय भोपाल।
2. प्रमुख सचिव, महामहिम राज्यपाल, राजभवन, मध्यप्रदेश, भोपाल।
3. अध्यक्ष, राजस्व मण्डल, मध्यप्रदेश ग्वालियर।
4. माननीय मंत्री/राज्यमंत्री के निज सचिव/निज सहायक, मध्यप्रदेश भोपाल।
5. प्रमुख सचिव (समन्वय), मुख्य सचिव कार्यालय, मंत्रालय, मध्यप्रदेश शासन, भोपाल।
6. महानिदेशक, प्रशासन अकादमी, मध्यप्रदेश, भोपाल।
7. प्रमुख सचिव, मध्यप्रदेश विधान सभा सचिवालय, भोपाल।
8. मुख्य निर्वाचन पदाधिकारी, मध्यप्रदेश, भोपाल।
9. अध्यक्ष, व्यावसायिक परीक्षा मण्डल, मध्यप्रदेश, भोपाल।
10. सचिव, मध्यप्रदेश राज्य निर्वाचन आयोग, भोपाल।
11. महाधिवक्ता/उप महाधिवक्ता, मध्यप्रदेश उच्च न्यायालय, खंडपीठ
इंदौर/ग्वालियर/जबलपुर।
12. रजिस्ट्रार जनरल, उच्च न्यायालय, मध्यप्रदेश, जबलपुर।
सचिव, लोक सेवा पबंधन विभाग
13. सचिव, लोकायुक्त, मध्यप्रदेश भोपाल।
14. सचिव, मध्यप्रदेश लोक सेवा आयोग, इंदौर।
15. उप सचिव/अवर सचिव, स्थापना/अधीक्षण/अभिलेख/मुख्य लेखाधिकारी,
मध्यप्रदेश, मंत्रालय, भोपाल।
16. आयुक्त, जनसंपर्क संचालनालय, मध्यप्रदेश, भोपाल।
17. सचिव, मध्यप्रदेश राज्य सूचना आयोग निर्वाचन भवन, द्वितीय मंजिल, भोपाल।

की ओर सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित।


(आर के गुज्जरीय)
उप सचिव
मध्यप्रदेश शासन
सामान्य प्रशासन विभाग

परिशिष्ट-एक

अनुकंपा नियुक्ति हेतु आवेदन पत्र का प्रारूप

1. (क) दिवंगत शासकीय सेवक का पूर्ण नाम
- (ख) पदनाम
- (ग) दिवंगत शासकीय सेवक की मृत्यु का दिनांक
- (घ) कार्यालय का नाम जहां मृत्यु पूर्व दिवंगत शासकीय सेवक पदस्थ था,
2. (क) आवेदक/आवेदिका का पूर्ण नाम
- (ख) दिवंगत शासकीय सेवक से संबंध
- (ग) स्थाई पता
- (घ) वर्तमान पता
- (ङ) जन्मतिथि अकों में
शब्दों में
- (च) आयु
- (छ) धर्म
- (ज) जाति (यदि अनुसूचित जाति/जनजाति या अन्य पिछड़ा वर्ग के हो तो स्पष्ट रूप से दर्शाये)
- (झ) शैक्षणिक अर्हताओं का विवरण
- (ञ) अन्य अर्हताओं का विवरण
3. (क) दिवंगत शासकीय सेवक के आश्रित परिवार के सदस्यों का विवरण एवं आवेदक को अनुकंपा नियुक्ति देने हेतु सहमति-

स. क्र.	परिवार के सदस्यों के पूर्ण नाम	आयु	दिवंगत शासकीय सेवक के साथ संबंध	यदि सदस्य हो तो उसका विवरण सकारात्मक है शासकीय/ अर्द्ध शासकीय या निजी सेवा	आवेदक को अनुकंपा नियुक्ति देने हेतु परिवार के सदस्यों की सहमति/ असहमति एवं हस्ताक्षर	टीप
1	2	3	4	5	6	7

घोषणा-पत्र

1. मैं एतद्वारा घोषणा करता/करती हूँ कि मेरे द्वारा दी गई उपरोक्त जानकारी मेरे ज्ञान एवं विश्वास के अनुसार सत्य है, यदि मेरे द्वारा दी गई जानकारी नियुक्ति के पूर्व या बाद में असत्य/गलत पाई जाती है अथवा नियुक्ति के पश्चात् अपात्रता पाई जाती है तो मैं पूर्ण रूप से जानता/जानती हूँ कि मेरी नियुक्ति निरस्त कर दी जाएगी और इस संबंध में प्रवधानित विधि एवं नियमों के अधीन मेरे द्वारा की जाने वाली कार्यवाही के लिए मैं उत्तरदायी रहूंगा/रहूंगी।

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2. मैं यह भी वचन देता हूँ/देती हूँ कि मैं स्व. श्री
(दिवंगत शासकीय सेवक का नाम) के आश्रित परिवार के अन्य सदस्यों का समुचित भरण-पोषण करूँगा/करूँगी, बाद में किसी भी समय यदि यह प्रमाणित हो जाए कि मेरे द्वारा परिवार के सदस्यों को अनदेखा किया जा रहा है, अथवा उनका सही ढंग से भरण-पोषण नहीं किया जा रहा है तो मेरी अनुकंपा नियुक्ति समाप्त की जा सकेगी।

स्थान:-.....

दिनांक:-.....

आवेदक के हस्ताक्षर

कार्यालय प्रमुख का प्रमाणीकरण

प्रमाणित किया जाता है कि:-

1. आवेदक/आवेदिका द्वारा आवेदन पत्र में दिये गये संपूर्ण तथ्यों/विवरण की सूक्ष्मता से जांच कर ली गई है।
2. आवेदक/आवेदिका ने आश्रित परिवार तथा उनके रोजगार का जो विवरण दिया है उसका प्रमाणीकरण कर लिया गया है।
3. मैं पूर्ण जांचोपरांत इस बात से सतुष्ट हूँ कि आवेदक/आवेदिका को अनुकंपा नियुक्ति की पात्रता आती है। आवेदक को अनुकंपा नियुक्ति दी जाना उचित होगा।

कार्यालय प्रमुख के हस्ताक्षर

(जहां दिवंगत शासकीय सेवक कार्यरत था)

नाम

कार्यालय का नाम

टीप:-आवेदन पत्र के साथ निम्नलिखित दस्तावेजों की स्वतः द्वारा अभिप्रमाणित छायाप्रतियां संलग्न की जाएं :-

1. दिवंगत शासकीय सेवक का मृत्यु प्रमाण पत्र
2. शैक्षणिक तथा अन्य अहंताओं की अंकसूची, प्रमाण पत्र
3. जन्मतिथि का प्रमाण पत्र
4. मध्यप्रदेश के स्थानीय निवासी/मूल निवासी होने का प्रमाण पत्र
5. यदि आवेदक अनुसूचित जाति/जनजाति तथा अन्य पिछड़े वर्ग का हो तो तदविषयक प्रमाण पत्र

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 6903 OF 2021

The State of Madhya Pradesh & Ors.

...Appellant(s)

Versus

Ashish Awasthi

...Respondent(s)

WITH

CIVIL APPEAL NO. 6904 OF 2021

The State of Madhya Pradesh & Ors.

...Appellant(s)

Versus

Baalendu Yadav

...Respondent(s)

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 12.12.2018 passed by the Division Bench of the High Court of Madhya Pradesh Bench at Jabalpur in WA No. 1559 of 2018 by

which the Division Bench of the High Court has allowed the said appeal and has quashed and set aside the judgment and order passed by the

learned Single Judge of the High Court and has directed that the

appellants herein – original respondents to consider the claim of the respondent herein – original writ petitioner for a compassionate appointment, the State of Madhya Pradesh has preferred the present appeal.

2. That the respondent's father was working on the post of Chowkidar in the office of Assistant Engineer, Public Health Engineer, District Tikamgarh, Madhya Pradesh. That the father of the respondent died on 08.10.2015. That at the time of death the deceased employee was serving as a work charge and he was paid salary from the contingency fund. That the respondent was provided a compensatory amount of Rs. 2 lakhs as per the policy prevalent at the time of death of the deceased employee, i.e., policy dated 29.09.2014. That after the death of the deceased employee, the policy for appointment on compassionate ground came to be amended vide circular dated 31.08.2016 and it was provided that even in case of death of the employee working on work charge, his one of the heirs/dependents shall be eligible for the appointment on compassionate ground.

2.1 The respondent filed a writ petition before the High Court, which came to be disposed of by the learned Single Judge with a direction to the appellants to decide the representation preferred by the respondent in accordance with law. That thereafter the respondent filed an

application for compassionate appointment and the same came to be rejected vide order dated 15.03.2017 on the ground that the policy/circular dated 31.08.2016 shall be applicable prospectively w.e.f. 22.12.2016 and as the deceased employee died on 08.10.2015, i.e., prior to the amended policy, the respondent shall not be entitled to any appointment on compassionate ground. That thereafter the respondent filed a fresh petition before the High Court being Writ Petition No.10903 of 2017. The learned Single Judge dismissed the said writ petition observing that considering the policy prevalent at the time of the death of the deceased work charge employee, his dependents/heirs shall not be entitled to appointment on compassionate ground and the subsequent policy/circular dated 31.08.2016 shall not be made applicable. The respondent preferred an appeal before the Division Bench being WA No.1559 of 2018 and relying upon the decision of the Full Bench of the Madhya Pradesh High Court in the case of **Bank of Maharashtra Vs. Manoj Kumar Deharia** reported in **2010 (4) MPHT 18**, the Division Bench has allowed the appeal and has directed the appellants to consider the case of the respondent for appointment on compassionate ground relying upon and/or considering the subsequent policy/circular dated 31.08.2016.

2.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court, the State of Madhya Pradesh has preferred the present appeal.

3. We have heard the learned counsel for the respective parties at length.

4. The deceased employee died on 08.10.2015. At the time of death, he was working as a work charge employee, who was paid the salary from the contingency fund. As per the policy/circular prevalent at the time of the death of the deceased employee, i.e., policy/circular No.C-3-12/2013/1-3 dated 29.09.2014 in case of death of the employee working on work charge, his dependents/heirs were not entitled to the appointment on compassionate ground and were entitled to Rs. 2 lakhs as compensatory amount. Subsequently, the policy came to be amended vide circular dated 31.08.2016, under which even in the case of death of the work charge employee, his heirs/dependents will be entitled to the appointment on compassionate ground. Relying upon the subsequent circular/policy dated 31.08.2016, the Division Bench of the High Court has directed the appellants to consider the case of the respondent for appointment on compassionate ground. As per the settled preposition of law laid down by this Court for appointment on compassionate ground, the policy prevalent at the time of death of the

deceased employee only is required to be considered and not the subsequent policy.

4.1 In the case of **Indian Bank and Ors. Vs. Promila and Anr., (2020) 2 SCC 729**, it is observed and held that claim for compassionate appointment must be decided only on the basis of relevant scheme prevalent on date of demise of the employee and subsequent scheme cannot be looked into. Similar view has been taken by this Court in the case of **State of Madhya Pradesh and Ors. Vs. Amit Shrivastava, (2020) 10 SCC 496**. It is required to be noted that in the case of **Amit Shrivastava (supra)** the very scheme applicable in the present case was under consideration and it was held that the scheme prevalent on the date of death of the deceased employee is only to be considered. In that view of the matter, the impugned judgment and order passed by the Division Bench is unsustainable and deserves to be quashed and set aside.

4.2 The submission on behalf of the respondent that after the impugned judgment and order passed by the High Court, the respondent has been appointed and therefore his appointment may not be disturbed, deserves rejection. Once the judgment and order passed by the Division bench under which respondent is appointed is quashed and set aside, necessary consequences shall follow and the appointment of the respondent, which was pursuant to the impugned judgment and

order passed by the Division Bench of the High Court cannot be protected.

5. In view of the above and for the reasons stated above, the present appeal succeeds, the impugned judgment and order passed by the Division Bench of the High Court of Madhya Pradesh Bench at Jabalpur in WA No.1559 of 2018 is hereby quashed and set aside by observing that the respondent shall not be entitled for appointment on compassionate ground on the basis of the subsequent circular/policy dated 31.08.2016.

It is reported that the amount of Rs. 2 lakhs which was paid to the respondent as compensatory amount pursuant to the policy/scheme of 2014 has been given back by the respondent. If that be so, the same may be paid to the respondent.

Civil Appeal No.6904 of 2021

For the reasons stated in the judgment and order in Civil Appeal No.6903 of 2021, the impugned judgment and order passed by the Division Bench of the High Court in Writ Appeal No.2003 of 2019 also deserves to be quashed and set aside as in the present case also, the Division Bench of the High Court has directed the appellants to consider the case of the respondent for appointment on compassionate ground applying the subsequent scheme/circular and though under the

scheme/circular prevalent on the date of death of the deceased employee, who at the relevant time was serving on work charge establishment, also deserves to be quashed and set aside and consequently, the present appeal is also allowed.

The impugned judgment and order dated 16.12.2019 passed by the High Court of Madhya Pradesh, Jabalpur in WA No. 2003 of 2019 is hereby quashed and set aside. However, in the facts and circumstances of the case, there is no order as to costs.

Pending applications, if any, also stand disposed of.

.....J.
[M.R. SHAH]

NEW DELHI;
NOVEMBER 18, 2021.

.....J.
[SANJIV KHANNA]

26

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

REVIEW PETITION (C) NO. 512 OF 2022

IN

CIVIL APPEAL NO. 6903 OF 2021

ASHISH AWASTHI

Petitioner(s)

VERSUS

THE STATE OF MADHYA PRADESH & ORS.

Respondent(s)

O R D E R

Application for hearing of the Review Petition in the open Court is rejected.

Having carefully gone through the Review Petition, the order under challenge and the papers annexed therewith, we are satisfied that there is no error apparent on the face of the record, warranting reconsideration of the order impugned.

The Review Petition is, accordingly, dismissed.

.....J.
(M.R. SHAH)

.....J.
(SANJIV KHANNA)

NEW DELHI;
MAY 04, 2022

Signature Not Verified
Digitally signed by R
Natarajan
Date: 2022.05.05
16:42:10 IST
Reason: 

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

R.P.(C) No. 512/2022 in C.A. No. 6903/2021

(Arising out of impugned final judgment and order dated 18-11-2021
in C.A. No. No. 6903/2021 passed by the Supreme Court Of India)

ASHISH AWASTHI

Petitioner(s)

VERSUS

THE STATE OF MADHYA PRADESH & ORS.

Respondent(s)

(FOR ADMISSION and IA No.166358/2021-EXEMPTION FROM FILING O.T. and
IA No.57994/2022-APPLICATION FOR LISTING REVIEW PETITION IN OPEN
COURT)

Date : 04-05-2022 This matter was circulated today.

CORAM : HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MR. JUSTICE SANJIV KHANNA

By Circulation

UPON perusing papers the Court made the following
O R D E R

Application for hearing of the Review Petition in the open
Court is rejected.

The Review Petition is dismissed in terms of the signed
order.

(R. NATARAJAN)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
BRANCH OFFICER

(Signed order is placed on the file)

Indian Bank vs Promila . on 8 January, 2020

Supreme Court of India

Indian Bank vs Promila . on 8 January, 2020

Author: Sanjay Kishan Kaul

Bench: Sanjay Kishan Kaul, K.M. Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2798 OF 2010

INDIAN BANK & ORS.

... Appell

VERSUS

PROMILA & ANR.

...Respond

JUDGMENT

SANJAY KISHAN KAUL, J.

1. One Jagdish Raj, husband of respondent No.1 and father of respondent No.2, was appointed as a Clerk-cum-Shroff in the appellant- Bank, where he continued to work till his unfortunate demise on 15.1.2004. He was drawing a gross monthly salary of Rs.16,486.60 at the time of his demise. Consequent to his death, the benefits available for the family of Signature Not Verified Digitally signed by ASHA SUNDRIYAL Date: 2020.01.08 Jagdish Raj were calculated and sanctioned to the tune of Rs.5,45,872, but 16:11:40 IST Reason:

on account of deductions for staff housing and vehicle loans, post adjustment, a net payment of Rs.2,99,672 was made to the family, apart from the grant of a monthly pension of Rs.5,574.12. An issue has been raised about the amount being paid less to the family of Jagdish Raj, but that has really not been debated before us.

2. Late Shri Jagdish Raj was survived by his wife and three minor children. As it transpires, respondent No.1 was already employed and earning a salary at the time of the demise of her husband, which information came to the knowledge of the appellant-Bank, later. The cause for the present dispute arises from an application made on behalf of the son (respondent No.2 herein) seeking compassionate employment on account of demise of Shri Jagdish Raj. We may add at the threshold that this application was made on 24.1.2004, on which date the son was a minor. Needless to say that any such request for compassionate employment had to be in terms of the prevalent scheme at that time. There has been some confusion as to the scheme applicable and, thus, this Court directed the scheme prevalent, on the date of the death, to be placed before this Court for

29

consideration, as the High Court appears to have dealt with a scheme which was of a subsequent date. The need for this also arose on account of the legal position being settled by the judgment of this Court in *Canara Bank & Anr. v. M. Mahesh Kumar*,¹ qua what would be the cut-off date for application of such scheme. It is trite to emphasise, based on numerous judicial pronouncements of this Court, that compassionate appointment is not an alternative to the normal course of appointment, and that there is no inherent right to seek compassionate appointment. The objective is only to provide solace and succour to the family in difficult times and, thus, the relevancy is at that stage of time when the employee passes away. An aspect examined by this judgment is as to whether a claim for compassionate employment under a scheme of a particular year could be decided based on a subsequent scheme that came into force much after the claim. The answer to this has been emphatically in the negative. It has also been observed that the grant of family pension and payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The crucial aspect is to turn to the scheme itself to consider as to what are the provisions made in the scheme for such compassionate appointment.

3. On the relevant scheme being placed before us, what emerges is that vide Circular No.56/79, a scheme was brought into force for compassionate appointment on 4.4.1979. This is the scheme which was applicable on 1(2015) 7 SCC 412 15.1.2004, i.e. on the date of the death of Shri Jagdish Raj. A provision was made for compassionate appointment, but subject to the terms & conditions of the scheme. Para 7 of the scheme reads as under:

“7. According to an agreement with the Union, the dependant will either be paid gratuity as if the deceased employee has served the full term of service, which will be calculated as per gratuity rules on the basis of his/her last drawn pay at the time of his/her death or given the option for appropriate employment for one dependant subject to the rules framed for appointment under compassionate grounds. It is therefore, obvious that appointments under compassionate grounds will be open only to dependants who do not opt for payment of gratuity for the full term of service of the employee who died while in service.” The aforesaid paragraph, thus, makes it clear that either gratuity or compassionate appointment can be availed of by the dependants. The result is that if the dependants opted for payment of gratuity for the term of service of the employee who died while in service, no compassionate appointment could be granted. The admitted position is that the benefit of gratuity was availed of by the dependants in the present case.

4. Another relevant paragraph of the scheme is para 8, which reads as under:

“8. No person or dependant can claim, as a matter of right, employment in the Bank under this Scheme and appointments will be considered purely at the sole discretion of the Bank. The Bank reserves to itself the right to modify, suspend, or withdraw the scheme at any time at its sole discretion and the Bank's decision in this regard will be final and cannot be called in question.” The aforesaid paragraph makes the consideration for appointment on compassionate grounds at the discretion of the Bank, and not as a matter of right. This really only emphasizes the settled position of law, discussed aforesaid.

5. A new Scheme was promulgated on 5.11.1985, but para 4 of the Scheme clarifies as under:

“the norms prescribed under scheme for appointment in the Bank of a dependent of a confirmed employee who dies while in service remains unchanged.” Thus, though this may be a new Scheme, it, in effect, continued the older Scheme, and that is the reason the terms of that Scheme applied on the date of death of Shri Jagdish Raj, on 15.1.2004.

6. The first communication was addressed by respondent No.1, on 24.1.2004, to the CMD of the appellant-Bank, seeking compassionate appointment for her son, respondent No.2. The aforesaid arrangement, thus being applicable even at that time.

7. A development post the demise, and this application, was a new Scheme being brought into force through a Board meeting of the appellant- Bank w.e.f. 27.4.2004, by way of Circular No. PRNL/09/2004-05, in supersession of the previous Scheme. However, the qualification for such Scheme was the death of an employee on account of injury sustained while performing official duty, with a second condition that the monthly income of the family (including terminal benefits, insurance claims, investments, etc. as well as pension and spousal income) was less than 60% of the last drawn gross salary, net of taxes, of the deceased employee and that the application for such compassionate appointment had to be submitted within three (3) months from the demise of such deceased employee. There was also an option to provide ex gratia compensation with the same second qualification as aforesaid, if such application is made within three (3) months from the demise of the deceased employee. The Scheme also refers to a lumpsum compensation, even where this 60% bar is crossed, and for Clerks like Shri Jagdish Raj, the amount specified is Rs.2 lakh.

8. The appellant-Bank, thus, in response to the application for compassionate appointment, sent a communication to respondent No.1, asking her to submit a fresh application under the new Scheme within a month, i.e., by 9.8.2004. The intent, really, was that only cash compensation could be made available. This period, for tendering an application seeking cash compensation, was further extended repeatedly, but it appears that the respondents did not apply for the same as they appeared to be only interested in compassionate appointment.

9. A Circular No. PRNL/72/2005-06 dated 30.8.2005 was issued whereby the benefit of compassionate appointment was denied to a dependent of an employee who died in harness. Thus, only cash compensation was the benefit which would accrue. The norm of 60% eligibility criterion was still made applicable and the application had to be preferred within six (6) months from demise. This Scheme came into force from 10.8.2005.

10. Respondent No.1 made available her gross salary declaration of Rs.15,912 only on 17.2.2006, which crossed the benchmark of 60% and, thus, the respondents were informed vide letters dated 10.5.2006 and 30.6.2006 that even cash compensation was not available to the family, and that there could be no question of compassionate appointment.

31

11. It is in the aforesaid circumstances that the respondents filed CWP No.17105/2006 on 27.10.2006, seeking consideration of compassionate appointment under the 2004 Scheme, upon respondent No.2 attaining age of majority. Ex gratia benefits, which were held back, were also sought, along with interest.

12. The High Court of Punjab & Haryana vide impugned order dated 11.8.2008, granted Rs.2 lakh ex gratia payment, while leaving it open to the respondents to make an appropriate application regarding any terminal benefits, if not paid. This Rs.2 lakh benefit is in consonance with the subsequent Schemes of 2004 and 2005 which had come into force, and appears to have been so done more out of sympathy than any other factor.

13. The appellant-Bank aggrieved by this order filed a Special Leave Petition and interim order of stay was granted on 16.1.2009. Leave was granted subsequently and the interim order was made absolute.

14. We have examined the aforesaid factual matrix and the contentions raised by learned counsel for the parties.

15. The question of applicability of any subsequent Scheme really does not apply in view of the judgment of this Court in Canara Bank². Thus, it would not be appropriate to examine the case of the respondents in the context of subsequent Schemes, but only in the context of the Scheme of 4.4.1979, the terms of which continued to be applicable even as per the new Scheme of 5.11.1985, i.e. the Scheme applicable to the respondents. There is no provision in this Scheme for any ex gratia payment. The option of compassionate appointment was available only if the full amount of gratuity was not taken, something which was done. Thus, having taken the full amount of gratuity, the option of compassionate appointment really was not available to the respondents.

16. We may also notice that though the subsequent Schemes were not applicable, even if benefit was sought to be given of those Schemes, initial non-disclosure and subsequent disclosure by respondent No.1, of her employment and her emoluments would disentitle her under those Schemes, too. Thus, when the appellant was calling upon the respondents to apply under the subsequent Schemes, that could have been beneficial to the 2(supra) respondents only if they were entitled to any of the benefits under that Scheme. That could not happen because the benchmark provided in those subsequent Schemes took the emoluments of respondents beyond the prescribed limit, so as to disentitle them from both, compassionate employment and ex gratia payment.

17. We have to keep in mind the basic principles applicable to the cases of compassionate employment, i.e., succor being provided at the stage of unfortunate demise, coupled with compassionate employment not being an alternate method of public employment. If these factors are kept in mind, it would be noticed that the respondents had the wherewithal at the relevant stage of time, as per the norms, to deal with the unfortunate situation which they were faced with. Thus, looked under any Schemes, the respondents cannot claim benefit, though, as clarified aforesaid, it is only the relevant Scheme prevalent on the date of demise of the employee, which could have been considered to be applicable, in view of the judgment of this Court in Canara Bank³. It is not for the

Indian Bank vs Promila . on 8 January, 2020

Courts to substitute a Scheme or add or subtract from the terms thereof in judicial review, as has been recently emphasized by this Court in *State of Himachal Pradesh & Anr. v. Parkash 3(supra) Chand4*.

18. We may have sympathy with the respondents about the predicament they faced on the demise of Shri Jagdish Raj, but then sympathy alone cannot give remedy to the respondents, more so when the relevant benefits available to the respondents have been granted by the appellant-Bank and when respondent No.1, herself, was in employment having monthly income above the benchmark.

19. We have, thus, no option but to reluctantly set aside the impugned order and dismiss the writ petition originally filed by the respondents.

20. The appeal is accordingly allowed, leaving the parties to bear their own costs.

.....J.

[Sanjay Kishan Kaul]J.

[K.M. Joseph] New Delhi.

January 8, 2020.

4(2019) 4 SCC 285

Supreme Court of India

The State Of Madhya Pradesh vs Amit Shrivastava on 29 September, 2020

Author: Sanjay Kishan Kaul

Bench: Sanjay Kishan Kaul, Hrishikesh Roy

REPORT

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8564 OF 2015

STATE OF MADHYA PRADESH & ORS.

...APPELLANT

Versus

AMIT SHRIVASTAVA

...RESPONDENT

JUDGMENT

SANJAY KISHAN KAUL, J.

1. The respondent raises a claim of entitlement to compassionate appointment on account of the demise of his father late Shri Ranglal Shrivastava, who was working as a Driver in the Tribal Welfare Department, Bhopal, Madhya Pradesh, since 6.6.1984 till he passed away on 11.12.2009, i.e., over a period of almost 23 years.

2. The claim of the respondent was predicated on the nature of employment of his late father, who was initially appointed as a work- Signature Not Verified Digitally signed by Anita Malhotra Date: 2020.09.29 19:18:25 IST Reason:

charged employee. On 12.3.1987, he was made permanent and was paid salary at a regular pay-scale. The benefits of revision of pay and krammonati (promotion) were also extended to him from time to time. On the demise of late Shri Ranglal Shrivastava, he left behind an ailing wife, a son (i.e., the respondent herein) and three daughters and is stated to have been the sole breadwinner for his family. The family, thus, faced undue economic hardship. A Pension Payment Order ('PPO') under the Madhya Pradesh Civil Pension Rules, 1976 was issued in favour of the family on account of his having worked from 12.3.1987 to 11.12.2009 on the basis of his last pay-scale and grade pay. In view of the economic hardship, the respondent filed an application seeking the benefit of compassionate appointment.

3. The request of compassionate appointment was, however, rejected by the third appellant vide order dated 19.8.2010. Reliance was placed on the Policy in force for compassionate appointment dated 18.8.2008, issued by the General Administration Department Ministry, Madhya Pradesh

34

28

Government. This policy pertains to when a Government servant dies while in service, and if such an employee is earning a salary from the work-charge/contingency fund at the time of his/her demise, then there was no provision for the grant of such appointment. In this behalf, reliance was placed on Clause 12.1 of the Policy, which provided for a compassionate grant of Rs.1,00,000/- to the nominated dependent of such an employee, and in this case, the same was sanctioned to the wife of the deceased. It would be appropriate to reproduce the relevant clause as under:

"12. Provisions for work charge/contingency and daily wage employees 12.1 When employees receiving salary from work charge/contingency fund and daily wage employee die, they would not be eligible for the compassionate appointment; however Rs.1 lakh in one installment in the name of compassionate grant shall be given to the dependent member of the family nominated by them. The amount of gratuity shall not be included in it. The payment of this amount shall be given from the salary head under the head of work charge/contingency of the concerned department."

4. The respondent, being aggrieved by the aforesaid order dated 19.8.2010, filed WP No. 3542/2012 before the High Court of Madhya Pradesh, Gwalior Bench. The Madhya Pradesh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 (hereinafter referred to as the 'Pension Rules'), more specifically Rule 2(c), was relied upon. This Rule stipulates that any contingency paid employee or work-charged employee who has completed 15 years or more of service on or after 1.1.1974, as a permanent employee. It would be relevant to reproduce the definition of work-charged employee and permanent employee as set out in Rules 2(b) & 2(c) of the Pension Rules as under:

"2. Definitions. — In these rules, unless the context otherwise requires, -

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(b) "Work-Charged employee" means a person employed upon the actual execution, as distinct from general supervision of a specified work or upon subordinate supervision of the departmental labour, store, running and repairs of electrical equipment and machinery in connection with such work, excluding the daily paid labour and muster-roll employee employed on the work;

(c) "Permanent employee" means a contingency paid employee or a work-charged employee who has completed fifteen years of service or more on or after the 1st January, 1974."

5. It is not in dispute that the father of the respondent had completed more than 15 years of service at the time of his demise and was, thus, a permanent employee. Thus, the respondent claimed entitlement to compassionate appointment being eligible for a Class IV post as per Policy of 18.8.2008 and sought the quashing of the impugned decision dated 19.8.2010.

6. The writ petition was opposed by the appellants on the ground that the father of the respondent had been appointed on contingency basis as per requirement of work as a driver. Such appointment was with the condition that his service may be terminated with one month's notice and that his

35 20

salary would be released from the contingency fund. In this behalf reliance was placed on his appointment order dated 5.6.1987, but strangely neither of the parties placed any appointment letter/order on record. The factum of the wife of the deceased having already received Rs. 1,00,000/- as relief in terms of the Policy was emphasised.

7. The writ petition was allowed by the learned Single Judge of the High Court vide order dated 19.7.2013, relying upon an earlier judgment dealing with the issue of an employee, who had been serving for more than 15 years and who was, thus, found to qualify for the status of a permanent employee. This relied upon order was sustained in a writ appeal and an SLP against this was also dismissed. On the issue of the applicability of Clause 12.1 of the Policy reproduced hereinabove, it was opined that the same would apply to such employees who had not attained permanency, i.e., once an employee becomes permanent under the Pension Rules, Clause 12.1 was held as inapplicable for 1 Shahjad Khan v. State of Madhya Pradesh & Ors. (WP No. 2731/2010, WA No. 110/2013 and SLP (C) No. 5859/2014) compassionate appointment.

8. The fact that the appellants had even granted krammonati to the late father of the respondent was also taken as the supportive reasoning. The appellants were directed to consider the case of the respondent for compassionate appointment in terms thereof. Aggrieved by the same, the appellants preferred Writ Appeal No. 583/2013, inter alia, on the ground that the respondent was not entitled to compassionate appointment and he was not a regular Government employee within the meaning of Rule 2(b) of the Madhya Pradesh Civil Service Conduct Rules, 1965, which reads as under:

"2. Definitions. - In these rules, unless the context otherwise requires,-

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(b) "Government servant" means any person appointed to any civil service or post in connection with the affairs of the State of Madhya Pradesh.

Explanation. - A Government servant whose services are placed at the disposal of a company, corporation, organisation or local authority by the Government shall, for the purpose of these rules, be deemed to be a Government servant serving under the Government notwithstanding that his salary is drawn from sources other than from the Consolidated Fund of the State."

9. The emphasis of the appellants was also on the principle that a compassionate appointment is not an inherent right but a prerogative of the State, which can only be granted as per the concerned policy formulated and enforced at the relevant time. Since Clause 12.1 of the Policy did not provide for compassionate appointment to work-charge/contingency fund and daily wage employees, the monetary benefit as admissible therein had already been granted. The difference between a regular and a permanent employee was emphasised and additionally, it was pleaded that even the Rs. 1,00,000/- paid had not been directed to be refunded.

36

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10. The writ appeal was dismissed by the Division Bench of the High Court vide impugned order dated 2.1.2014, primarily predicated on the reasoning that the late father of the respondent was a permanent employee as per the Pension Rules. Insofar as grant of amount of Rs. 1,00,000/- was concerned, it was directed to be returned to the appellants in the event of the respondent gaining compassionate appointment.

11. It appears that the appellants were in the process of filing an SLP and, thus, on 12.2.2014, appellant No. 3 accepted the respondent's claim for compassionate appointment, but subject to the conditions that the amount of Rs. 1,00,000/- should be returned, that such appointment would be dependent on the availability of a vacancy/post, that the posting offered be compulsorily accepted, and lastly, if an SLP/appeal is filed, then the outcome of the same will be binding. The SLP was filed on 12.7.2014 and after condonation of delay, notice was issued and the operation of the impugned judgment was stayed vide order dated 6.2.2015. Leave was granted on 12.10.2015 and the interim order was made absolute. Thus, till date the respondent has not got the benefit of compassionate appointment.

12. We have heard the learned counsels for the parties.

13. In our opinion, the only issue which has to be examined is whether the late father of the respondent who admittedly was employed as a work-charged/contingency employee in the Tribal Welfare Department was entitled to the compassionate appointment as per the existing policy on the date of his demise.

14. It is trite to say that there cannot be any inherent right to compassionate appointment but rather, it is a right based on certain criteria, especially to provide succor to a needy family. This has to be in terms of the applicable policy as existing on the date of demise, unless a subsequent policy is made applicable retrospectively.²

15. Insofar as providing succor is concerned, unfortunately, since the demise of the late father of the respondent, 11 years have passed and really speaking, the aspect of providing succor to the family immediately does not survive. We have still examined the matter in the conspectus of the applicable policy. It is not in question that the Policy prevailing was one dated 18.8.2008. Clause 12.1 clearly proscribes work-charge/contingency fund and daily wage employees from compassionate appointment. The gravamen of the submission of the respondent is based on the classification of his late father as a permanent employee on account of having worked for more than 15 years and the consequent regularisation of his service.

16. In our view, the aforesaid plea misses the point of distinction between a work-charged employee, a permanent employee and a regular employee. The late father of the respondent was undoubtedly a work-charged employee and it is nobody's case that he has not been paid out of work-charged/contingency fund. He attained the status of a permanent employee on account of having completed 15 years of service, which in *State of Gujarat & Ors. v. Arvindkumar T. Tiwari & Anr.*, (2012) 9 SCC 545 entitled him to certain benefits including pension and gratification. This will, however, not ipso facto give him the status of a regular employee.

37

17. In the aforesaid behalf, an analogy can be drawn with the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963, under which employees can be classified as permanent, permanent seasonal, probationers, badlis, apprentices, temporary and fixed-term employment employees. A work-charged contingency employee can also be classified under any of the aforementioned categories and under the said Standing Orders, the classification as permanent can be granted even on the completion of 6 months service in a clear vacancy.

18. We are not required to labour much on the aforesaid issue and really speaking this issue is no more res integra in view of the judgment of this Court in Ram Naresh Rawat v. Ashwini Ray & Ors.,³ which opined that a 'permanent' classification does not amount to regularisation. The case dealt with the aforesaid Standing Orders and it has been observed in paras 24, 26 & 27 as under:

"24. It is, thus, somewhat puzzling as to whether the employee, on getting the designation of "permanent employee" can be treated as "regular" employee. This answer does not flow from the reading of the Standing Orders Act and Rules. In common parlance, normally, 3 (2017) 3 SCC 436 a person who is known as "permanent employee" would be treated as a regular employee but it does not appear to be exactly that kind of situation in the instant case when we find that merely after completing six months' service an employee gets right to be treated as "permanent employee". Moreover, this Court has, as would be noticed now, drawn a distinction between "permanent employee" and "regular employee".

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26. From the aforesaid, it follows that though a "permanent employee" has right to receive pay in the graded pay-scale, at the same time, he would be getting only minimum of the said pay- scale with no increments. It is only the regularisation in service which would entail grant of increments etc. in the pay-scale.

27. In view of the aforesaid, we do not find any substance in the contentions raised by the petitioners in these contempt petitions. We are conscious of the fact that in some cases, on earlier occasions, the State Government while fixing the pay scale, granted increments as well. However, if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under Article 14 is not in negative terms (See Indian Council of Agricultural Research & Anr. v. T.K. Suryanarayan & Ors. [(1997) 6 SCC 766])

19. The conclusion to be drawn from the aforesaid is that attaining the status of permanent employee would entitle one only to a minimum of the pay-scale without any increments. It is this aspect which was sought to be emphasised by learned counsel for the respondent to contend that this would not apply, because in the present case, krammonati and increments were given. However, we may note that in the order dated 7.2.2002 granting the benefit of monetary krammonati to employees, including the respondent's father, it was specified that the same would not affect the posts of such employees.

38

20. The moot point, thus, is that having been granted increments, could a person be said to have reached the status of a regular employee? In order to answer this question, we may note that while considering this aspect in the aforesaid judgment, it was specifically opined that even "if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under Article 14 is not in the negative terms." We say so, not with the objective of giving a licence to the appellants to withdraw any of the benefits, which are already granted, and we make this unequivocally clear. However, we cannot at the same time make a conclusion that the status acquired is that of a regular employee upon having achieved the status of a permanent employee in service.

21. Thus, the classification of the late father of the respondent as a permanent employee, and this distinction between a 'permanent' status and a 'regular' status appears to have been lost sight of in the impugned judgments.

22. We may also notice the reliance placed by learned counsel for the respondent on certain other cases where orders similar in nature were passed by the High Court and an SLP against one of these orders was dismissed, but then we have already observed that this will not give a right for perpetuating something which is not permissible in law.

23. We had the occasion of examining the issue of compassionate appointment in a recent judgment in *Indian Bank & Ors. v. Promila & Anr.*⁴ We may usefully refer to paras 3, 4, & 5 as under:

"3. There has been some confusion as to the scheme applicable and, thus, this Court directed the scheme prevalent, on the date of the death, to be placed before this Court for consideration, as the High Court appears to have dealt with a scheme which was of a subsequent date. The need for this also arose on account of the legal position being settled by the judgment of this Court in *Canara Bank & Anr. v. M. Mahesh Kumar*, (2015) 7 SCC 412, qua what would be the cut-off date for application of such scheme.

4. It is trite to emphasise, based on numerous judicial pronouncements of this Court, that compassionate appointment is not an alternative to the normal course of appointment, and that 4 (2020) 2 SCC 729 there is no inherent right to seek compassionate appointment. The objective is only to provide solace and succour to the family in difficult times and, thus, the relevancy is at that stage of time when the employee passes away.

5. An aspect examined by this judgment is as to whether a claim for compassionate employment under a scheme of a particular year could be decided based on a subsequent scheme that came into force much after the claim. The answer to this has been emphatically in the negative. It has also been observed that the grant of family pension and payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The crucial aspect is to turn to the scheme itself to consider as to what are the provisions made in the scheme for such compassionate appointment."

24. We are, thus, unable to give any relief to the respondent, much as we would have liked under the circumstances, but are constrained by the legal position. The family of the late employee has already been paid the entitlement as per applicable policy.

25. We may, however, notice a subsequent development arising from certain additional documents placed on record pertaining to the amendment to the policy of 18.8.2008 vide Circular dated 29.9.2014. In terms of this Circular, the compassionate grant amount was increased from Rs. 1,00,000/- to Rs. 2,00,000/-. Another Circular was issued on 31.8.2016, through which, a decision was taken that the dependents of deceased employees drawing a salary from the work-charged/contingency fund would be entitled to compassionate appointment, but it was clarified vide Circular dated 21.3.2017 that pending cases before the date of the 31.8.2016 Circular would be decided only in terms of the amended Policy dated 29.9.2014. That being the position, this last Circular also does not come to the aid of the respondent as it would amount to making the policy retrospectively applicable, while the Circular says to the contrary.

26. We, however, are of the view that we can provide some succor to the respondent in view of the Circular dated 21.3.2017, the relevant portion of which reads as under:

"2. In this regard, it is clarified that the compassionate appointment for the employees of Workcharge and Contingency Fund is in force also w.e.f. 31.08.2016. And the cases pending before this date, will be decided only in accordance with the directions issued for compassionate appointment on 29.09.2014, i.e., they will be eligible only for compassionate grant and not the compassionate appointment. The proceedings be ensured accordingly."

27. The aforesaid Circular records that pending cases will be decided in accordance with the directions issued for compassionate appointment on 29.9.2014. The present case is really not a pending case before the authority, but a pending lis before this Court.

28. We are, thus, of the view that it would be appropriate to use our powers under Article 142 of the Constitution of India to do complete justice between the parties by increasing the amount from Rs. 1,00,000/- to Rs. 2,00,000/- as aforesaid. We, in fact, adopted a similar approach in *Punjab State Power Corporation Limited & Ors. v. Nirval Singh*.⁵

29. It appears from the documents on record that possibly a sum of Rs. 1,00,000/- was deposited by the respondent with the State Bank of India in an interest-bearing deposit in 2016, and the amount would possibly be lying in the same deposit. This would have been pursuant to the impugned order. We, thus, direct that this FDR be released to the respondent and that this amount, along with interest which would accrue to the benefit of the respondent, apart from the additional amount of Rs. 1,00,000/-, we have found as payable to the respondent which should be so paid within a period of two (2) months from today, failing which it will carry interest @ 12 per cent per annum (simple interest) till the date 5 (2019) 6 SCC 774 of payment.

30. The appeal is accordingly allowed leaving the parties to bear their own costs.

40

The State Of Madhya Pradesh vs Amit Shrivastava on 29 September, 2020

.....J.

[Sanjay Kishan Kaul]J.

[Aniruddha Bose]J.

[Krishna Murari] New Delhi.

September 29, 2020.

Canara Bank & Anr vs M. Mahesh Kumar on 15 May, 2015

Supreme Court of India

Canara Bank & Anr vs M. Mahesh Kumar on 15 May, 2015

Author:J.

Bench: T.S. Thakur, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.260/2008

CANARA BANK & ANR.

..Appellants

Versus

M. MAHESH KUMAR

..Respondent

WITH

CIVIL APPEAL NO.266/2008

CHAIRMAN AND MANAGING DIRECTOR
CANARA BANK & ORS.

..Appellants

Versus

SANTHA & ANR.

..Respondents

AND

CIVIL APPEAL NO.267/2008

CHAIRMAN AND MANAGING DIRECTOR
CANARA BANK & ORS.

..Appellants

Versus

A.K. SHEEBA & ANR.

..Respondents

J U D G M E N T

R. BANUMATHI, J.

Common question of law falling for consideration in these civil appeals is whether the dependant family members of the deceased employee of the appellant-Canara Bank were entitled to seek compassionate appointment on the basis of 'Dying in Harness Scheme' which was passed Vide Circular No.154/1993 w.e.f. 8.05.1993. The claim is resisted by the Canara Bank on the ground that the financial condition of the family members of the deceased employees is good and that the Scheme dated 8.05.1993 has been replaced with scheme dated 14.02.2005 (H. O. Circular No.35/2005) scrapping the provision of compassionate appointment and in lieu thereof introduced the new scheme of ex-gratia payment.

2. In Civil Appeal No.260/2008, the Division Bench of the High Court of Kerala at Ernakulam vide its Order dated 24.08.2006 in Writ Appeal No. 1313/2003 (B) titled as Canara Bank & Anr. vs. M. Mahesh Kumar directed the bank to reconsider the claim of the claimant- M. Mahesh Kumar within two months from the date of order. Further, due to the pendency of SLP against the decision dated

24.08.2006 in Writ Appeal No.1313/2003(B), the Division Bench of the High Court of Kerala also disposed off the Writ Appeal Nos.2333/2006 and 2335/2006 vide common order dated 11.12.2006 and directed the claimants to approach this Court. Assailing the aforesaid three decisions of the Division Bench of the Kerala High Court, the appellant-bank has filed the instant appeals.

3. For convenience, Civil Appeal No.260/2008 is taken as a lead case. Brief facts which led to the filing of the appeal are as follows:- Respondent applied to the appellant-bank on 30.11.1998 claiming to be considered for compassionate appointment on account of death of his father, a clerk in the appellant-bank who while on duty died on 10.10.1998. Respondent had applied for the compassionate appointment on account of 'Dying in Harness Scheme' with effect from 8.05.1993 then in vogue in the appellant-bank. The bank vide its communication dated 30.06.1999 rejected the claim of the respondent on the ground that the respondent's family financial position does not show any indigent circumstances warranting to provide employment on compassionate ground. The respondent gave his representation to the General Manager of the appellant-bank and several other representations for reconsideration of his claim; but nothing fruitful happened in consideration of respondent's claim for compassionate appointment. Thereafter, respondent filed O.P. No.21630/2002 (Y) before the High Court of Kerala, Ernakulam seeking to quash the Ext.P4 and direction to the appellant-bank to appoint him as per 'Dying in Harness Scheme' then in force in the appellant-bank. The learned Single Judge of the High Court vide judgment dated 30.05.2003 allowed the Original Petition of the respondent herein and quashed Ext.P4 and directed the appellant-bank to reconsider the claim of the respondent for appointment in accordance with law within two months from the date of receipt of copy of judgment. Appellant-bank assailed the decision of the learned Single Judge in Writ Appeal No.1313/2003 (B) and the Division Bench upholding the order of the Single Judge dismissed the writ appeal. The appellant-bank has filed this appeal assailing the correctness of the above order.

4. Learned counsel for the appellant-bank contended that consideration for appointment on compassionate ground is contrary to Articles 14 and 16 of the Constitution of India and is only in the nature of concession and, therefore, it does not create a vested right in favour of the claimant/respondent. It was submitted that 'Dying in Harness Scheme' is a non-statutory scheme and is in the form of a concession and it does not create a vested right in favour of the claimant/respondent to be enforced through a writ of mandamus. It was further submitted that the compassionate appointment is justified when it is granted to provide immediate succour to the deceased-employee and cannot be granted on the passage of time and in all these cases, the concerned employee died about two decades ago and, therefore, the High Court was not justified in directing the appellant-bank to reconsider the claim of the respondent for compassionate appointment. In support of his contention, learned counsel for the appellant relied upon number of judgments: Umesh Kumar Nagpal vs. State of Haryana And Ors., (1994) 4 SCC 138; Steel Authority of India Ltd. vs. Madhusudan Das & Ors., (2008) 15 SCC 560; Union of India & Anr. vs. B. Kishore, (2011) 4 SCALE 298; State of Haryana vs. Naresh Kumar Bali, (1994) 4 SCC 448; State Bank of India & Ors. vs. Jaspal Kaur, (2007) 9 SCC 571 and State Bank of India & Anr. v. Raj Kumar, (2010) 11 SCC 661.

5. Per contra, learned counsel for the respondent contends that the order was passed by the appellant-bank without considering the facts that is size of the respondent's family/employment status of his family members and sources of their income, liabilities and expenses and the decision of the bank rejecting the case of the respondent for compassionate appointment is arbitrary. Placing reliance upon Jaspal Kaur's case (supra) and other decisions, it was submitted that the case of the respondent ought to have been considered in the light of the Scheme 'Dying in Harness Scheme' which was then in vogue. The respondent averred that the payment of terminal benefits cannot be taken as a ground for rejecting employment under the 'Dying in Harness Scheme'.

6. We have considered the rival contentions of both the parties and perused the impugned judgments and the material on record.

7. Law with regard to employment on compassionate ground for dependant of a deceased employee is well settled. In *Sushma Gosain & Ors. vs. Union of India & Ors.*, (1989) 4 SCC 468, this Court held as thus:

"9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant." The settled law which has been reiterated in various cases has been succinctly elucidated in *MGB Gramin Bank vs. Chakrawarti Singh*, (2014) 13 SCC 583, wherein it was observed that compassionate appointment cannot be granted as of right and the application to be decided as expeditiously as possible and held as under:-

"6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years." (Underlining added)

8. The above consistent view has been reiterated in various judgments by this Court in *Umesh Kumar Nagpal vs. State of Haryana & Ors.* (1994) 4 SCC 138, *State of Manipur vs. Md. Rajaodin*, (2003) 7 SCC 511, *Steel Authority of India Ltd. vs. Madhusudan Das & Ors.*, (2008) 15 SCC 560 and

44

Sanjay Kumar vs. State of Bihar & Ors., (2000) 7 SCC 192.

9. Before advertng to the arguments of the learned counsel for the parties, it is necessary to examine the scope of the Scheme dated 8.05.1993 vide Circular No.154/1993 for "compassionate appointment". The object of the Scheme is to help dependants of employees of Canara Bank who die or become totally and permanently disabled while in harness and to overcome the immediate financial difficulties on account of sudden stoppage of the main source of income. The employment under the scheme will be considered only if there are indigent circumstances necessitating employment to one of the dependants and the deceased employee's service record is unblemished. Mere eligibility will not vest a right for claiming employment. As per para 3.1, application for employment should be sought within 2½ years from the date of death of the employees. In para 3.2, it is stated that in case of the dependant of the deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority provided a request is made to the bank by the family of the deceased employee and the same may be considered subject to rules prevailing at the time of consideration.

10. During the pendency of the matter before the Division Bench, Indian Banks Association (for short 'IBA') formulated a scheme based on the guidelines issued by the Government of India. As per the said Scheme, the banks have scrapped the scheme of compassionate appointment and introduced the new scheme of ex-gratia payment in lieu of compassionate appointment by H.O. Circular No.35/2005 dated 14.02.2005. According to appellant-Bank, as on date of consideration of the application for compassionate appointment, there was no policy to provide compassionate appointment under 'Dying in Harness Scheme'. It is therefore the contention of the bank that the new scheme of 2005 applies to all pending applications for appointment on compassionate ground, respondent's case could not be considered and as per the new Scheme, they are only entitled to ex-gratia payment in lieu of compassionate appointment.

11. The main question falling for consideration is whether the Scheme passed in 2005 providing for ex-gratia payment or the Scheme then in vogue in 1993 providing for compassionate appointment is applicable to the respondent. Appellant-bank has placed reliance upon the judgment of this Court in Jaspal Kaur's case (supra) to contend that the respondent's case cannot be considered on the basis of 'Dying in Harness Scheme 1993' when the new Scheme of 2005 providing for ex-gratia payment had been put in place. In Jaspal Kaur's case (supra), Sukhbir Inder Singh employee of State Bank of India, Record Assistant (Cash & Accounts) passed away on 1.08.1999. Widow of the employee applied for compassionate appointment in State Bank of India on 5.02.2000. On 7.01.2002, the competent authority of the bank rejected the application of Jaspal Kaur in view of the Scheme vis-a-vis the financial position of the family. Against that decision of the competent authority, the respondent filed writ petition before the Punjab and Haryana High Court which has directed to consider the case of Jaspal Kaur by applying the Scheme formulated on 4.08.2005 when her application was made in the year 2000. In that factual matrix, this Court has directed that dispute arising in the year 2000 cannot be decided on the basis of a Scheme that was put in place much after the dispute. By perusal of the judgment in Jaspal Kaur's case, it is apparent that the judgment specifically states that claim of compassionate appointment under a scheme of a particular year cannot be decided in the light of the subsequent scheme that came into force much after the claim.

115

12. The same principle was reiterated by this Court in the case of Bhawani Prasad Sonkar vs. Union of India & Ors., (2011) 4 SCC 209, wherein it was held as under :-

“15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee’s family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

17. In Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138, while emphasising that a compassionate appointment cannot be claimed as a matter of course or in posts above Classes III and IV, this Court had observed that: (SCC p. 140, para 2) “2. ...The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the [pic]rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate

appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts." (Underlining added)

13. Applying these principles to the case in hand, as discussed earlier, respondent's father died on 10.10.1998 while he was serving as a clerk in the appellant-bank and the respondent applied timely for compassionate appointment as per the scheme 'Dying in Harness Scheme' dated 8.05.1993 which was in force at that time. The appellant-bank rejected the respondent's claim on 30.06.1999 recording that there are no indigent circumstances for providing employment to the respondent. Again on 7.11.2001, the appellant-bank sought for particulars in connection with the issue of respondent's employment. In the light of the principles laid down in the above decisions, the cause of action to be considered for compassionate appointment arose when the Circular No.154/1993 dated 8.05.1993 was in force. Thus, as per the judgment referred in Jaspal Kaur's case, the claim cannot be decided as per 2005 Scheme providing for ex-gratia payment. The Circular dated 14.2.2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per circular of 1993.

14. It is also pertinent to note that 2005 Scheme providing only for ex-gratia payment in lieu of compassionate appointment stands superseded by the Scheme of 2014 which has revived the scheme providing for compassionate appointment. As on date, now the scheme in force is to provide compassionate appointment. Under these circumstances, the appellant-bank is not justified in contending that the application for compassionate appointment of the respondent cannot be considered in view of passage of time.

15. Insofar as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority.

47

16. In *Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors.*, (2000) 6 SCC 493, while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in paragraph (13), this Court held as under:-

“13.But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family — this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation.” Referring to *Steel Authority of India Ltd.’s* case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents’ family is having any other income to negate their claim for appointment on compassionate ground.

17. Considering the scope of the Scheme ‘Dying in Harness Scheme 1993’ then in force and the facts and circumstances of the case, the High Court rightly directed the appellant-bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence. We do not find any reason warranting interference.

18. So far as the cases in Civil Appeal No.266/2008 and Civil Appeal No.267/2008 are concerned, they are similar and those respondents are similarly placed and the appeals preferred by the bank are liable to be dismissed. The appellant-bank is directed to consider the case of the respondents in Civil Appeal Nos. 266/2008 and 267/2008.

19. In the result, all the appeals preferred by the appellant-bank are dismissed and the appellant bank is directed to consider the case of the respondents for compassionate appointment as per the Scheme which was in vogue at the time of death of the concerned employee. In the facts and circumstances of the case, we make no order as to costs.

.....J.

(T.S. Thakur)J.

(R. Banumathi) New Delhi;

May 15, 2015