

Court No. - 18

Case :- WRIT - A No. - 3667 of 2014

Petitioner :- Daya Pratap Pal

Respondent :- Union Of India Thru Its Secy.Ministry Of Home Affairs And Ors.

Counsel for Petitioner :- M.P. Raju,Deepak Kumar Singh

Counsel for Respondent :- A.S.G.,Alok Kr. Misra,Raj Kumar Singh

Hon'ble Manish Kumar,J.

1. Heard learned counsel for petitioner, Shri Raj Kumar Singh, learned counsel for respondent as well as learned State counsel and perused the record.

2. The present writ petition has been preferred for quashing of the impugned order dated 10.07.2014 passed by respondent no. 1, Secretary, Ministry of Home Affairs, Central Secretariat New Delhi by which the claim of the petitioner for compassionate appointment has been rejected on the ground that the petitioner was married at the time of the demise of his father and as per the Office Memorandum issued by the Department of Personnel and Training dated 30.05.2013, the married son is not entitled for compassionate appointment.

3. Learned counsel for petitioner has submitted that the father of the petitioner expired on 04.11.2012 while working on the post of Constable. After the demise of his father, the petitioner had made an application on 08.01.2013 for consideration of his candidature for compassionate appointment. It is further submitted that the rejection order relied upon the letter dated 08.01.2014, issued by the Director General (Mahanideshalaya), which is not applicable retrospectively in the case of the petitioner.

4. It is further submitted that the application of the petitioner is to be decided as per the policy/Rules/Office Memorandum existing either on the date of the death of his father or on the date on which the petitioner had submitted his application, whereas the claim of the petitioner was rejected by placing reliance upon the letter dated 08.01.2014 issued by the office of Director General which provides that the married son is not eligible for compassionate appointment. In support of his submission, learned counsel for petitioner has relied upon the judgment of Hon'ble Apex Court in the case of **Chief General Manager, Telecommunication, BSNL and ors. versus Vidya Prasad dated 28.09.2021 in Civil Appeal No(s): 6019 of 2021 arising out of SLP (C) No. 16404 of 2018.**

5. On the other hand, learned counsel for respondents has submitted that there was no provision for giving compassionate appointment to a married son either at the time of the demise of the father of the petitioner or at the time of application preferred by the petitioner and the application was rejected as per the direction issued by the DoP&T dated 30.05.2013 and the reference of subsequent letter is consequential letter issued by the office of Director General in pursuance of the direction issued by the DoP&T dated 30.05.2013. It is further submitted that for the first time, the married son has been included for consideration of compassionate appointment by the direction of DoP&T dated 25.02.2015. It is further submitted that in the said direction of DoP&T dated 25.02.2015, it has also been provided that the cases of compassionate appointment already settled with respect to the FAQs dated 30.05.2013 may not be reopened and has further submitted that the case of the petitioner was decided as per the existing policy issued by the DoP&T. In support of his submission, learned counsel for respondents has relied upon the judgement of Hon'ble Apex Court in the case of **N.C Santhosh Versus State of Karnataka and ors.**

6. After hearing learned counsel for the parties and going through the records of the case, and the judgments cited by both the sides, the father of the petitioner had expired on 04.11.2012 and the petitioner had preferred the application for consideration of his candidature for compassionate appointment on 08.01.2013. On both the dates, the direction of the DoP&T dated 30.05.2013 was in operation, where it was specifically been directed that married son is not covered for consideration for compassionate appointment.

7. The impugned order has been passed by placing reliance upon the directions of the DoP&T dated 30.05.2013. The letter dated 08.01.2014, issued by the office of Director General is consequential order and it cannot be said that the impugned order has been passed in pursuance of the letter of the office of Director General dated 08.01.2014, whereas the order was passed as per the directions of the DoP&T dated 30.05.2013. The learned counsel for petitioner has relied upon the judgment in the case of **Chief General Manager, Telecommunication, BSNL and ors. versus Vidya Prasad dated 28.09.2021 in Civil Appeal No(s): 6019 of 2021 arising out of SLP (C) No. 16404 of 2018.** The relevant extract is quoted herein below:-

"In the given case, either on the death of his father or on the date on which he submitted his application for compassionate appointment, the Scheme of 1998 was in vogue for seeking compassionate appointment, and as observed he was eligible under the Scheme 1998 but his application remained pending until the new Scheme was introduced on 27.06.2007 and thereafter rejected by a

letter dated 15.09.2007."

8. Learned counsel for respondents have relied upon the judgement of Hon'ble Apex Court in the case of **N.C Santhosh Versus State of Karnataka and ors.** The relevant extract of the same is quoted herein below:-

"Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee."

9. The judgments relied upon by the learned counsel for the respective parties, the position which emerges out from the law laid down by the Hon'ble Apex Court is that the scheme or policy which is applicable either on the date of the demise of the deceased employee or the date on which the dependent has moved an application is relevant for the purposes of deciding the application. It is also held by the Hon'ble Apex Court that the norms prevailing on the date of consideration of the application, should be the basis of consideration of the claim for compassionate appointment. It is further held that a dependent on a government employee, in absence of any vested right accruing on the death of government employee, can only demand consideration of his /her application. However, he is not entitled to seek consideration in accordance with the norms as applicable on the date of death of government employee, not the subsequent right as the petitioner is claiming in the light of the subsequent guidelines/directions issued by DoP&T dated 25.02.2015.

10. In the light of the discussions made herein above, no interference is called for in the order dated 10.07.2014 passed by respondent no. 3.

11. Thus, the petition being devoid of merits is hereby **dismissed**.

Order Date :- 24.1.2024
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