

before issuance of Annexure P-18 the petitioner's case was pending consideration, hence, Annexure P-18 has no application so as to refuse to grant the benefit.

Learned counsel for the second respondent submitted that claim of the petitioner under instructions dated 31.8.1995 is not applicable to the petitioner's case having regard to the subsequent development that the State Government has issued rules i.e. Rules 2003 and on 31.3.2003, the instructions dated 31.8.1995 have been repealed and further it has been repealed on 20.3.2006 vide Annexure P-18. Therefore, the petitioner is not entitled for compassionate appointment on medical ground as and when Rules 2003 are introduced and instructions dated 31.8.1995 ceases. Thus, on the date of petitioner's father retirement Rules 2003 were already in vogue. Hence, application of instructions dated 31.8.1995 is not applicable. Hence, the petitioner has not made out a case so as to interfere with the order dated 12.1.2015 (Annexure P-17).

Learned counsel for the 1st respondent vehemently contended that vide Annexure P-18 dated 20.3.2006, the State Government has clarified and it is made clear that instructions dated 31.8.1995 has been repealed. Therefore, it relates back to the date of issuance of the Rules 2003 issued on 28.2.2003 which were gazetted on 4.3.2003. Therefore, as on the date of petitioner's father retirement Rules 2003 were in existence. Consequently, issuance of compassionate appointment on medical ground is impermissible.

Heard learned counsel for the parties.

The petitioner's father retired on 9.12.2004. As on the date of retirement of petitioner's father whether instructions dated 31.8.1995 are

existing or not is the core issue in the present petition.

The instructions dated 31.8.1995 relates to employment to dependent of deceased Government employee under the exgratia scheme. It also covers for issuance of compassionate appointment on medical ground. In other words, if an employee is medically unfit/blind/incapacitated by the special medical board and retired on or before attaining the age of 58 years, in such event, compassionate appointment on medical ground is permissible. Relevant clause-5 of the instructions dated 31.8.1995 reads as under:

“5. That facility of compassionate appointment to a dependent of a government servant shall be available if the letter is declared medically unfit/blind/incapacitated by the special medical board and retired on or before attaining the age of 55 years in the case of Class I, II, III officers/officials and 57 years in case of class IV employees. A Government employee who is declared incapacitated/blind after 55 years of age in the case of group A, B, C and after 52 years of age in the case of Group D employees, will not be entitled to this facility. Subject to this case of compassionate employment to a dependent of a deceased employee would be applicable in these cases as well.”

The State Government issued Rules i.e. Rules 2003. These rules are relating to only for issuance of appointment in respect of deceased Government employee. In other words, the said Rules do not cover the case of appointment on medical ground. In other words, instructions dated 31.8.1995 cover both appointment to the dependent of the deceased Government employee so also on medical ground. Thus, Rules 2003 restricted to deceased Government employee. In other words, under Rules 2003, issue relating to compassionate appointment on medical ground is not

covered. Therefore, it has to be held that insofar as compassionate appointment on medical ground issue is concerned is to be with reference to instructions dated 31.8.1995. Further it is evident that after Rules 2003 was introduced, large number of cases were considered for compassionate appointment on medical ground which is evident from Annexures P-9 to P-12. The contention of the respondents that instructions dated 31.8.1995 has been repealed under Rules 2003 is concerned is incorrect for the reasons that Rules 2003 provides only compassionate assistance to the dependent of the deceased Government employee and not compassionate appointment on medical ground i.e. an employee who is medically unfit/blind/incapacitated by the special medical board with certain conditions which are stated in para-5 of the instructions dated 31.8.1995. Moreover, question of repealing instructions dated 31.8.1995 under Rules 2003 would not arise for the reasons that rules can be repealed and not the instructions that too which are not part of the object of the scheme i.e. Rules 2003 which is relating to compassionate assistance to the dependent of the deceased Government employee. Therefore, till date instructions dated 31.8.1995 has not been withdrawn as per rules of business under Article 166 of the Constitution of India. It is presumed that the notification or instructions dated 31.8.1995 is only instructions. In other words, the same is an executive order. Executive order is required to be withdrawn, modified or cancelled. Mere saying repealing instructions dated 31.8.1995 in Rules 2003 is erroneous. Therefore, even to this day instructions dated 31.8.1995 is in force.

Accordingly, impugned communication dated 12.1.2015 is set aside. Second respondent is directed to re-consider the petitioner's case on par with decision in CWP No.4066 of 2007; decided on 27.8.2008 read with

the appointment orders issued vide Annexures P-9 to P-12. Second respondent is directed to re-consider and pass appropriate order within a period of three months from today.

Petition stands allowed.

03.03.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No