

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2700 of 2012

Sheetal Kumar Dubey, S/o. Late Nutan Prasad Dubey, Aged about 32 years,
R/o. Vishwanath Gali, Sonarpara, Champa, District Janjgir-Champa
Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, through: the Secretary, General Administration Department, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh
2. Collector, Janjgir-Champa, District Janjgir-Champa Chhattisgarh
3. District Education Officer, Janjgir-Champa, District Janjgir-Champa Chhattisgarh

---Respondents

For Petitioner	:	Mr. Awath Tripathi, Advocate
For State	:	Mr. Ayaz Naved, G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/08/2019

1. The challenge in the present writ petition is to the order Annexure P/1 dated 02.06.2012, whereby the compassionate appointment granted to the petitioner on 08.10.2008 has been cancelled and the petitioner's services were terminated.
2. The facts of the case is that the father of the petitioner was working as a Teacher under the erstwhile State of Madhya Pradesh and was posted in the territories of District Janjgir-Champa, which now falls within the territories of the State of Chhattisgarh. The father of the petitioner died in harness on 22.09.1994. The petitioner was the only son of the deceased employee late Nutan Prasad Dubey. The petitioner on the date of death of his father was a minor and on attaining the age of majority moved an application on

03.06.2000 i.e. again before the State of Chhattisgarh was created by virtue of the M.P. Reorganization Act, 2000. Since the State was created on 01.11.2000 and the application which the petitioner had moved was within the territories which fell within the State of Chhattisgarh his application was being processed in the State of Chhattisgarh on the terms and conditions of scheme of compassionate appointment as was applicable under the erstwhile State of Madhya Pradesh, which was continued in the State of Chhattisgarh till the new scheme was brought into force.

3. After due consideration of the application of the petitioner, he was finally granted appointment on 08.10.2008 vide Annexure P/5. The petitioner was appointed on the post of Assistant Grade-III and the petitioner worked on the said post for a period of about 3 ½ years, when abruptly the services of the petitioner was terminated vide Annexure P/1 dated 02.06.2012, whereby the respondent No.3 cancelled the order of appointment given to the petitioner.
4. The contention of the petitioner was that the impugned order Annexure P/1 is totally bad in law for the reason that the respondent No.3 has applied the circular of 03.04.2012 for terminating the services and for cancellation of the appointment which was issued on 08.10.2008, which is otherwise impermissible under law. According to the petitioner, the application for claim for compassionate appointment was raised in the year 2000 itself, as would be evident from the record. That on the date of death as well as on the date when the petitioner had applied for compassionate appointment, the scheme had a clause for raising a claim for compassionate appointment on attaining the age of majority in case if the legal heir of the deceased employee was a minor. Thus, the claim of the petitioner was considered and decided in terms of the scheme that was prevalent on the date of death as well as on the date

of application, therefore the appointment of the petitioner could not have been held to be bad in law, nor could the appointment have been cancelled invoking a circular of the State Government subsequently issued whereby the scheme stood modified.

5. The State counsel on the contrary opposing the petition submits that since the order of appointment was issued on 08.10.2008 and on the date when the order of appointment was issued, the State Government had already framed its own scheme for compassionate appointment and under the scheme there was no such provision for keeping the claim for compassionate appointment alive till a minor in the family of the deceased attained the age of majority, therefore the appointment so granted to the petitioner was contrary to the scheme for compassionate appointment on the date when the order of appointment was issued. Moreover, the State counsel further submits that the State Government as a policy decision vide circular dated 03.04.2012 had decided that it would only consider cases for compassionate appointment where the death of the deceased employee took place between 01.11.1997 to 31.10.2000 and not in respect of those cases, where the death took place prior to 01.11.1997. According to the State counsel, since the death in the present case of the deceased employee was of the year 1994, the petitioner herein was not entitled for an appointment in the year 2008 and therefore the order Annexure P/1 cannot be said to be bad in any manner and prayed for rejection of the writ petition.
6. Having heard the contentions put forth on either side and on perusal of record, the admitted factual position as it stands from the documents available in the record of the writ petition, the date of death of the deceased employee late Nutan Prasad Dubey was 22.09.1994. The date on which the

petitioner had applied for compassionate appointment is 03.06.2000. The claim of the petitioner was processed by the authorities in terms of the scheme for compassionate appointment applicable on the date of death as well as on the date of application. On both these dates, the scheme for compassionate appointment had a clause for keeping a claim alive till a minor member in the deceased family attained the age of majority. Admittedly, the petitioner was granted an order of appointment on compassionate basis vide Annexure P/5 dated 08.10.2008. The petitioner had worked with the respondents for a period of more than 3 ½ years and it is only thereafter that the respondents issued the petitioner with a show cause notice calling for his explanation as to why his appointment should not be cancelled. The petitioner submitted his reply also and it is only thereafter that the impugned order was passed.

7. The issue that is to be considered in the present case is whether the decision of the respondent No.3 in canceling the appointment of the petitioner based on the circular of the State Government or scheme of the State Government for compassionate appointment which was enacted much subsequent to the petitioner having applied or from a much after the date of death of the deceased employee.
8. The said issue came up for consideration before the Hon'ble Supreme Court in the case of **“Canara Bank and another Vs. M. Mahesh Kumar” 2015(7) SCC 412**. In the said case, the Hon'ble Supreme Court in very categorical terms has held that the claim for compassionate appointment has to be considered and decided on the basis of the scheme for compassionate appointment prevailing on the date of death and atleast on the date when the application was made. It was also held by the Hon'ble Supreme Court

that the claim of a person cannot be defeated on the basis of a subsequent scheme, which is brought into force or by way of a subsequent amendment to the scheme for compassionate appointment is concerned.

9. Admittedly, on the date of death as well as on the date when the petitioner had applied, the scheme for compassionate appointment prevailing had a clause for keeping a claim alive in respect of a candidate or person, who was a minor on the date of death of the deceased employee and he was allowed to make a claim on his attaining the age of majority. There is no dispute to this fact also as is evident from the plain reading of the impugned order itself wherein in paragraph No.3, the respondent No.3 accepted that there was such a provision prevalent on the date of application.
10. Taking into consideration, the principles of law that has been settled by the Hon'ble Supreme Court in the aforesaid referred judgment in the case of “**Canara Bank**” (supra), the impugned order apparently seems to be bad in law for the reason that the scheme for compassionate appointment, the circulars relied upon by the respondent No.3 are all which have been enacted or brought into force much after the petitioner's application was processed by the State authorities under the then existing scheme. Moreover, the circular referred to in paragraph No.3 i.e. the circular dated 03.04.2012 is one which has been issued after about 3 years of the petitioner having given appointment.
11. For this reason also the said circular or the scheme could not have been made applicable so far as the case of the petitioner is concerned. The impugned order thus is totally unsustainable and is accordingly set-aside/quashed. It is directed that the petitioner should be immediately

reinstated in service and he would also be entitled for all consequential benefits.

12. With the aforesaid observations, the present writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved