

A THE STATE OF MADHYA PRADESH & ORS.

v.

ASHISH AWASTHI

(Civil Appeal No. 6903 of 2021)

B NOVEMBER 18, 2021

[M. R. SHAH AND SANJIV KHANNA, JJ.]

- Service Law – Appointment on compassionate ground – 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 – 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 – Respondent filed a writ petition before the High Court – The Division Bench of the High Court 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 – On appeal, held: 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 – 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 – Thus, the respondent shall not be entitled for appointment on compassionate ground on the basis of the subsequent circular/policy dated 31.08.2016 – As per the policy/circular prevalent at the time of the death of the deceased employee 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.*

Disposing of the appeals, the Court

- HELD: 1. 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. [Para 4][447-G-H; 448-A-C]

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2. 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 Shrivs, (2020) 10 SCC 496. It is required to be noted that in the case of Amit Shrivs 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. [Para 4.1][448-C-F]

Bank of Maharashtra v. Manoj Kumar Deharia 2010
(4) MPHT 18 – referred to.

Indian Bank and Ors. v. Promila and Anr., (2020) 2 SCC 729 : [2020] 1 SCR 408; State of Madhya Pradesh and Ors. v. Amit Shrivs, (2020) 10 SCC 496 – referred to.

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- A **Case Law Reference**
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| [2020] 1 SCR 408 | referred to | Para 4.1 |
| (2020) 10 SCC 496 | referred to | Para 4.1 |
- CIVIL APPELLATE JURISDICTION: Civil Appeal No.6903 of
B 2021.
- From the Judgment and Order dated 12.12.2018 of the High Court of Madhya Pradesh, Bench at Jabalpur in W.A. No.1559/2018.
- With
- C Civil Appeal No.6904 of 2021.
- Ms. Ankita Chaudhary, Dy. AG, Ms. Samridhi Jain, Sunny Chaudhary, Mrinal Elker Mazumdar, Manish Yadav, Advs. for the Appellants.
- Pradeep Kumar Yadav, Vishal Thakre, Gopal Singh, Sanjeev D Malhotra, Hira Singh Rawat, Advs. for the Respondent.
- The Judgment of the Court was delivered by
- M. R. SHAH, J.**
1. Feeling aggrieved and dissatisfied with the impugned judgment E 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 F 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, G 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 H 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-

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- A 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,
- B 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 Shrivats, (2020) 10 SCC 496**. It is required to be noted that in the case of **Amit Shrivats (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.
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- 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.
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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
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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. A

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. B

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. C

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. D E

Pending applications, if any, also stand disposed of.

Ankit Gyan

Appeals disposed of.