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

Equivalent citations: AIR 2020 SUPREME COURT 4541, AIRONLINE 2020 SC 746

Author: Sanjay Kishan Kaul

Bench: Krishna Murari, Aniruddha Bose, Sanjay Kishan Kaul

REPORT

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8564 OF 2015

STATE OF MADHYA PRADESH & ORS. …APPELLAN

Versus

AMIT SHRIVAS …RESPONDE

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 Shrivas, who was working as a Driver in the Tribal Welfare Department, Bhind, 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- 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 Shrivas, 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 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 wager employees 12.1 When employees receiving salary from work charge/contingency fund and daily wager 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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> xxxx xxxx xxxx xxxx xxxx
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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;
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> (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 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.1 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,-

xxxx xxxx xxxx xxxx xxxx

(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 wager 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.

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 wager 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 2 State of Gujarat & Ors. v. Arvindkumar T. Tiwari & Anr., (2012) 9 SCC 545 entitled him to certain benefits including pension and krammonati. This will, however, not ipso facto give him the status of a regular employee.

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.

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 compassion 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.
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> 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.

……J. [Sanjay Kishan Kaul] ……J. [Aniruddha Bose] .....J. [Krishna Murari] New Delhi.

September 29, 2020.