

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION NO.25164 OF 2019

KAUSHAL KUMAR KACHHAWAHA

Versus

THE STATE OF M.P. & ORS.

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Appearance:

Shri Satyendra Jain – Advocate for the petitioner

Shri Naveen Dubey – Govt. Advocate for the respondents / State.

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ORDER

(Reserved on : 11/07/2024)

(Pronounced on : 30/07/2024)

The present petition has been filed challenging the order (Annexure P-8 dated 23.09.2017 whereby the authority of the State i.e. District Education Officer / respondent No.5 has intimated the private institution that the deceased father of the petitioner had expired while being posted in the private institution and if the said institution wishes to appoint the petitioner on compassionate ground then it is free to appoint as such but the grant-in-aid for payment of salary shall not be paid to the institution for the purpose of payment of salary to the petitioner.

2. Learned counsel for the petitioner has vehemently argued that the father of the petitioner was in service of private institution which was receiving grant-in-aid from the State Government and expired on 30.05.2019. It is the contention of learned counsel for the petitioner that the

deceased father of the petitioner was working as lower division teacher in the institution of respondents No. 2 & 3 and he was receiving salary from grant-in-aid. The State Government has issued instructions for providing compassionate appointment to dependents of teachers working in private institutions receiving grant-in-aid from the State Government and in terms of such executive instructions of the State, the provisions of compassionate appointment apply to dependents of teachers working in the grant-in-aid institutions also. Thus, in terms of the said executive instructions of the State one of which is placed on record as (Annexure P-13) dated 26.03.1997 it is contended that the petitioner has right of consideration for compassionate appointment under the head of grant-in-aid and the State authorities could not have refused to grant the status of grantee teacher to the petitioner.

3. Per Contra, it is argued by learned counsel for the State that earlier the grant-in-aid to the teachers in private institutions which were approved for that purpose by the State Government was being paid in accordance with The Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamcharyon Ke Vetano Ka Sandaya) Adhinyam, 1978. The said Act has been extensively amended in the year 2000 and after amendment the Act is now known as The Madhya Pradesh Ashaskiya Shikshan Sanstha (Anudan Ka Pradaya) Adhinyam, 1978 (hereinafter the pre-amended and post amended versions would be referred as unamended Act and amended Act respectively).

4. The learned counsel for the State submits that after coming into force of amended Act, there is no provision of approval of any new teacher for the purpose of providing grant-in-aid and now private institutions are required to generate their own resources for payment of salaries to their

teachers. It is further submitted that the aforesaid amendment was challenged before this Court and this Court had set aside the amendment by holding it to be ultra vires. The matter thereafter went to the Honble Supreme Court in Civil Appeal No. 6362/2004 and the Hon'ble Supreme Court set aside the order of this Court and upheld the amendment. However, only one rider was carved out that those teachers which were already appointed prior to 01.04.2000 i.e. the date of amendment, they will continue to receive the benefits under the unamended Act. Thus, it is contended that since the petitioner is seeking appointment from the State Government as grantee teacher after 01.04.2000, he is not covered in terms of the amended Act and therefore, the State Government has rightly communicated to the institution that if the institution so wishes, it can always appoint petitioner on compassionate basis from its own fund.

5. Heard the learned counsel for the parties and perused the record.

6. During the course of hearing it was common ground by both the parties that after enforcement of the amended Act from 01.04.2000, no new appointment are to be made on the posts receiving grant-in-aid from the State Government and such posts have been converted to dying cadre posts so far as the aspect of receiving grant from the State Government is concerned.

7. However, it was vehemently argued by learned counsel for the petitioner that the Hon'ble Supreme Court in Civil Appeal No. 6362/2004 has held that the teachers receiving grant-in-aid will receive the same service conditions in all the matters as is being extended to the teachers of corresponding categories in Government institutions. However, the said contention is misconceived. On bare perusal of the order passed by the Hon'ble Supreme Court in the aforesaid case, the Hon'ble Supreme Court

has only ordered the unamended Act to apply to the teachers who are already in service as on 31.03.2000. The said Act and the Rules framed thereunder only granted parity in the matter of payment of salary as compared to the corresponding categories of teachers in Government schools and in terms of Rule 33 of the Rules for grant-in-aid framed under the unamended Act. Now under the amended Act grant-in-aid of Rules 2008 have been framed which do not contain any such provision.

8. However, the said issue is not so much relevant for the purpose of this petition because the present petition does not relate to parity in the matter of salary and pay scales but relates to compassionate appointment. The learned counsel for the petitioner was at loss to point out whether there was any provision in the unamended Act itself that the kin of teachers receiving grant-in-aid from the State Government will get compassionate appointment. The compassionate appointment was ordered by executive instructions issued at the time when unamended Act was in force. Now after amended Act has come into force from 01.04.2000, no new appointments are to be made on posts receiving grant-in-aid from the State Government and the financial liability of such posts has come on the private institutions. The petitioner is undoubtedly seeking appointment after 01.04.2000 and the respondent No.5 seems to have rightly directed the institution that if the institution wishes, it can always appoint the petitioner but the liability of payment of salary would lie on the institution itself and not on the State Government. The petitioner at this point of time if he is appointed afresh would be appointed under the amended Act.

9. The learned counsel for the petitioner had heavily relied on the judgment of Coordinate Bench of this Court in case of **Smt. Raishri Ragase VS. The State of M.P. & Ors. (WP No. 845/2017 decided on**

28.06.2018). By relying on para-5 of the said order it is contended that the coordinate Bench has held that in terms of the judgment passed in Civil Appeal No.6362/2004 by the Hon'ble Apex Court the earlier policies for compassionate appointment would continue to apply which were issued under the unamended Act. However, the said order was subjected to writ appeal before the Division Bench in WA No. 1578/2019 and the Division Bench as passed the following order:-

“This intra-court appeal under Section 2 (1) of Madhya Pradesh Uchcha Nyayalya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 is directed against the order dated 28.6.2018 passed in Writ Petition No. 845/2017, whereby the direction is issued to consider the case of the petitioner (respondent herein) for appointment on compassionate ground.

2. Husband of the petitioner was a Lower Division Clerk in respondent No. 5 Educational Institution receiving grant-in-aid from State. He died on 5.7.2016. The petitioner submitted the application for compassionate appointment on 31.8.2016. Respondent No. 5 forwarded it to the District Education Officer, Respondent No. 4 and Respondent No. 2, Commissioner, Public Instructions who directed respondent No. 4 to decide the same; whereon the petitioner was informed vide communication dated 4.1.2017 that the request for appointment on compassionate ground cannot be acceded for the reasons that the decision is taken by the State Government not to give fresh appointment. The said decision is contained in clause 3 of the circular No. आर-1158 / 2014 / 20-3 dated 8.5.2015, which stipulates:

“3/ अनुदान प्राप्त अशासकीय शिक्षण संस्थाओं के अनुदान हेतु मान्य शिक्षकों/कर्मचारियों की सेवानिवृत्ति अथवा अन्य किसी कारण से पद रिक्त होने की स्थिति में उस पद पर नवीन नियुक्ति नहीं की जावेगी। उक्त पद अनुदान से अमान्य होकर देय अनुदान बन्द कर दिया जावेगा।”

3. Evidently the Institution is getting grant-in-aid from the State Govt. and though the State Government stopped all appointment arising from vacancy due to retirement or for any other reason,

which in our considered opinion will include the vacancy due to death of any employee, the respondent No. 5 is, however, not precluded from making appointment subject to stipulation contained in clause 3 of the circular dated 8.5.2015.

4. In view whereof the order dated 4.1.2017 passed by the District Education Officer, Chhindwara and the impugned order dated 28.6.2018 passed in Writ Petition No. 845/2017 are modified to the said extent.

5. The Writ Appeal is disposed of finally in above terms. No costs.

10. Thus, as per the order of Division Bench, the institution is free to appoint teachers on compassionate basis even after the amended Act has come into force but the onus of payment of salaries to such teachers could not lie on the State Government but would lie on the institution itself. The coordinate Bench of this Court at Gwalior in WP No. 7062/2016 also had the occasion to consider the same circular dated 23.02.1989 and held that the grantee post are now dying cadre posts and no benefit after promulgation of amended Act can be given to kin of these employees by considering the effect of circular dated 08.05.2015 which is placed on record in the present petition as (Annexure R-1) and so also considered by the Division Bench in WA No. 1578/2019. The coordinate Bench has held as under:-

17. Even otherwise, from the facts of the case, it also appears that bread earners of petitioners were teaching staff/employees of grant-in-aided schools and the staff who were appointed prior to year 2000 i.e. before promulgation of Amendment Act they were aided employees, therefore all benefits flowing from their status being aided employees appear to be diluted by the circular dated 08.05.2015, mainly on two counts. One is that policy of compassionate appointment on posts falling vacant due to death of employees of aided institutions has been withdrawn by the State Government and another is that all the posts which were occupied by the bread earners of petitioners were treated as dying cadre.

18. In other words, after the death or retirement of those employees, those posts of grant-in-aided schools were to be surrendered being dying cadre and nobody else could have been appointed on those posts. Therefore, on this count also, it cannot be assumed that petitioners can revive the concept of dying cadre otherwise declared so by the State Government based upon order of Supreme Court. Therefore, on those posts of dying cadre, compassionate appointments cannot be given.

19. Cumulatively, in the considered opinion of this Court, no case for interference is made out.

11. The case of the petitioner is squarely covered by the order by the Division Bench in WA no. 1578/2019 and in WP No. 7062/2016 passed by the coordinate Bench.

12. Consequently, the petition being devoid of merits is hereby **dismissed** with observation that respondents No. 2 & 3 are free to appoint the petitioner but will not claim salary from the State Government.

(VIVEK JAIN)
JUDGE

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