



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

WRIT PETITION No. 4352 of 2019

SURAJ SAGAR

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Raj Bahadur Singh Tomar - Advocate for the petitioner.

Shri K.K. Prajapati - Govt. Advocate for the State.

*Shri Arshad Ali M. Haque with Shri Amin Khan- Advocates for the
respondent [INT].*

Reserved on : 18-09-2026

Pronounced on : 15-10-2026

ORDER

Heard on **I.A. No.1929/2020**, an application for intervention is taken up, considered and allowed for the reasons mentioned therein.

2. This petition, under Article 226 of Constitution of India, has been filed seeking following relief (s):-

“7.1 That, order impugned annexure P/1 dated 18-02-2019 passed by the respondent no.3 may kindly be quashed.

7.2 That, the respondents kindly directed continue petitioner perform his duty on the post of Dawasaj.

7.3 That, other relief doing justice including cost be ordered.”



3. Learned counsel for the petitioner submits that the petitioner belongs to the Scheduled Caste category and possesses all the requisite qualifications for appointment to the post of Dawasaj. The petitioner's grandmother, Smt. Krishna Devi, was a Government employee and was working as a Dai in the Government Ayurved Dispensary, Mehgaon, District Bhind. The petitioner's father, Late Shri Veer Singh, died in the year 2008 when the petitioner was only 12 years old. Thereafter, the petitioner, his widowed mother, two sisters and younger brother were living with and were entirely dependent upon Late Smt. Krishna Devi for their survival. In view of such dependency, the petitioner's grandmother nominated the petitioner in her service records for all purposes.

4. It is further submitted by counsel for the petitioner that Smt. Krishna Devi died in harness on 06.12.2015. Being a dependent family member, the petitioner submitted an application for compassionate appointment on 09.06.2016. The said application was supported by the consent of the petitioner's widowed mother, who could not apply herself as she was not educationally qualified. The Screening Committee considered the application in light of the State Government policy dated 29.09.2014 and recommended the petitioner for compassionate appointment. Accordingly, the petitioner was appointed on the post of Dawasaj *vide* order dated 29.08.2016 for a probation period of three years, which he successfully completed. In compliance with the appointment order, the petitioner joined his duties at Government



Ayurvedic Dispensary, Debbhai, District Datia, on 30.08.2016 and continued to work and receive salary thereafter.

5. Learned counsel for the petitioner further submits that on the basis of a false complaint, a show-cause notice dated 12.02.2018 was issued to him, calling upon the petitioner to submit his reply within 15 days regarding the allegation that he did not fall within the definition of a dependent member under Clauses 2.1 to 2.7 of the policy dated 29.09.2014. The petitioner submitted his reply through registered AD on 26.02.2018, specifically stating that his grandmother had nominated him in her service records for all purposes and that the Screening Committee had considered all the relevant documents before recommending his appointment. The petitioner was also called to Bhopal on 10.05.2018 for recording his statement, wherein he explained the circumstances relating to the death of his father and the fact that the petitioner and his family were living with and dependent upon his grandmother. It is submitted that despite the aforesaid reply and statement, the Divisional Ayush Officer passed the impugned order dated 18.02.2019 cancelling the petitioner's appointment. Learned counsel submits that the said order was passed without considering the petitioner's reply, without providing proper opportunity of hearing and without conducting any formal enquiry. It is further submitted that cancellation of the appointment of a fourth-class employee amounts to a major penalty, and the respondents failed to follow the mandatory procedure prescribed under the Civil Services (Classification, Control and Appeal) Rules, 1966. There is also clear non-application of mind on the part of the



authorities, as the show-cause notice was issued by Respondent No.2, whereas the impugned order cancelling the appointment was passed by Respondent No.3 without issuing any independent notice to the petitioner.

6. Learned counsel for the petitioner further submits that the object of the policy dated 29.09.2014 is to provide compassionate appointment to the family of a deceased Government employee. Clauses 2.5 and 2.7 of the said policy provide that where both the husband and wife are deceased, an adopted son or any nominated member is eligible for appointment. Since the petitioner was nominated by his grandmother in her service records and was living as her dependent, his appointment was lawful and was made after following the prescribed procedure. It is submitted that there was no misrepresentation on the part of the petitioner.

7. In view of the aforesaid facts, learned counsel for the petitioner prays that a writ of mandamus or any other appropriate writ, order or direction be issued for quashing the impugned order dated 18.02.2019 passed by Respondent No.3. It is further prayed that the respondents be directed to permit the petitioner to continue on the post of Dawasaj and grant all other appropriate reliefs, including costs.

8. Learned counsel for the respondent/State submitted that the impugned order dated 18.02.2019 (Annexure P/1) has rightly been passed rejecting the claim of the petitioner for compassionate appointment, as the petitioner, being the son of the widow daughter of the deceased Government servant, does not fall within any of the



categories of eligible dependants prescribed under Clauses 2.1 to 2.7 of the policy issued by the State Government. It is submitted that merely because the grandmother of the petitioner, namely Smt. Krishna Devi, had nominated the petitioner in her nomination form, no right to compassionate appointment accrues in favour of the petitioner contrary to the provisions of the applicable policy. It is further submitted that the petitioner had submitted an application for compassionate appointment, but his claim was rightly rejected as compassionate appointment is not a matter of right and can be granted only to the persons covered by the policy. The object of the policy is to provide a source of livelihood to the family of the deceased Government servant, whereas the petitioner, being the son of the widow daughter, is not an eligible dependent under the policy. Thus, the respondents have committed no error in passing the impugned order and the present petition, being devoid of merit, deserves to be dismissed.

9. Learned counsel for the intervener opposed the present petition and submitted that the petitioner has suppressed material facts and has challenged the order dated 18.02.2019 passed by respondent No.3, whereby his claim for compassionate appointment on the death of his grandmother, Smt. Krishna Devi, was rightly rejected after due inquiry on a complaint. It is submitted that the intervener is the real daughter of deceased Smt. Krishna Devi and is entitled to raise her grievance regarding the claim of the petitioner. It is further submitted that the petitioner was not entitled to compassionate appointment under the applicable policy and had obtained the appointment by suppressing



material facts. It is also submitted that a succession suit concerning the rights of the family members is pending before the competent Court at Dabra. Therefore, the present petition, being devoid of merit, deserves to be dismissed.

10. No other point is pressed by learned counsel for the parties.

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

12. The question which arises for consideration is whether, in the facts of the present case, the respondents were justified in cancelling the petitioner's appointment after he had been appointed upon consideration of his case by the competent authority and had continued in service for several years.

13. It is true that compassionate appointment is an exception to the normal rule of recruitment and is governed by the applicable scheme. A person cannot claim compassionate appointment contrary to the governing policy. However, the present case has to be examined on its own facts. The petitioner was not appointed by concealing his relationship with the deceased employee. His case was placed before the competent authorities, his circumstances were considered by the Screening Committee and thereafter the appointment order was consciously issued. In the present case, the petitioner did not conceal his relationship with the deceased employee. His relationship with his grandmother and the circumstances of his family were placed before the authorities when his application was considered. The Screening Committee examined his case and recommended his appointment.



14. There is no finding in the impugned order that the petitioner obtained the appointment by producing a false document, practising fraud or deliberately suppressing any material fact. The respondents' case is that, on a subsequent examination, the petitioner did not fall within the category of dependent contemplated under the policy. Thus, the dispute is not regarding any subsequent misconduct of the petitioner but regarding the correctness of the decision taken by the authorities at the time of his appointment. An important aspect of the matter is the provision contained in the policy dated 29.09.2014 regarding the selection of a family member for compassionate appointment where the family members do not give consent to one another. The policy provides that, in such circumstances, the competent authority is required to decide the family member to whom appointment should be given. Thus, the policy itself recognises that disputes or differences among family members may arise and provides a mechanism for the authority to examine the claim and take a decision.

15. The Supreme Court in *Md. Zamil Ahmed v. State of Bihar, (2016) 12 SCC 342*, considered a similar issue relating to compassionate appointment. The appointment in that case was sought to be questioned after a long period on the ground that the employee did not fall within the definition of dependent under the applicable policy. The Supreme Court noticed that the relevant facts were known to the authorities when the appointment was made and that there was no fraud, false declaration or suppression on the part of the employee. In those circumstances, the



Supreme Court did not approve termination of the employee after such a long period.

16. The principle laid down in *Md. Zamil Ahmed* (supra) is applicable to the present case. Here also, the relevant facts were before the authorities when the petitioner's case was considered. The Screening Committee recommended his appointment and the competent authority thereafter issued the appointment order. The petitioner joined service and continued to work.

17. The Hon'ble Supreme Court in *Md. Zamil Ahmed* (supra) held as under;

"11. Keeping in view the peculiar undisputed facts of the case and having regard to the totality of the circumstances, we are of the considered view that the State was not justified in terminating the appellant's services. In other words, the ground on which the appellant's services were terminated by the State after a period of 15 years of the appellant's appointment does not appear to be well founded. This we say for the following reasons:

11.1. Firstly, the appellant and wife of the deceased at the time of seeking compassionate appointment did not conceal any fact nor filed any false or incorrect document/declaration. On the other hand, both of them disclosed their true family relations and conditions prevailing in the deceased's family on affidavit.

11.2. Secondly, the appellant, who is the brother of the deceased, undertook to maintain the family of the deceased in the event of his securing the compassionate appointment and he accordingly also gave such undertaking to the State.

11.3. Thirdly, there was no one in the family of the deceased to claim compassionate appointment except the appellant who, as mentioned above, was the close relative



of the deceased i.e. real younger brother and used to live with the deceased. He was otherwise eligible to claim such appointment being major, educated and only male member in the family.

11.4. Fourthly, the appellant after securing the employment throughout maintained the family of the deceased in all respects for the last more than 15 years and he is continuing to do so.

12. In the light of aforementioned reasons, which rightly persuaded the State to grant compassionate appointment to the appellant, we do not find any justification on the part of the State to dig out the appellant's case after 15 years of his appointment and terminate his services on the ground that as per the State policy, the appellant did not fall within the definition of the expression "dependant of deceased" to claim compassionate appointment.

13. The fact that the appellant was the younger brother of the deceased was within the knowledge of the State. Similarly, the State was aware that the brother does not fall within the definition of "dependant" at the relevant time and still the State authorities obtained the undertaking from the appellant that he would maintain the family of the deceased once given the appointment.

14. In our considered view, the aforesaid facts would clearly show that it was a conscious decision taken by the State for giving an appointment to the appellant for the benefit of the family members of the deceased who were facing financial hardship due to sudden demise of their breadearner. The appellant being the only close relative of the deceased could be given the appointment in the circumstances prevailing in the family. In our view, it was a right decision taken by the State as a welfare State to help the family of the deceased at the time of need of the family.

15. In these circumstances, we are of the view that there was no justification on the part of the State to wake up after



the lapse of 15 years and terminate the services of the appellant on such ground. In any case, we are of the view that whether it was a conscious decision of the State to give appointment to the appellant as we have held above or a case of mistake on the part of the State in giving appointment to the appellant which now as per the State was contrary to the policy as held by the learned Single Judge, the State by their own conduct having condoned their lapse due to passage of time of 15 years, it was too late on the part of the State to have raised such ground for cancelling the appellant's appointment and terminating his services. It was more so because the appellant was not responsible for making any false declaration nor he suppressed any material fact for securing the appointment. The State was, therefore, not entitled to take advantage of their own mistake if they felt it to be so. The position would have been different if the appellant had committed some kind of fraud or manipulation or suppression of material fact for securing the appointment. As mentioned above such was not the case of the State.

16. It is for this reason, we are of the view that action on the part of welfare State in terminating the appellant's service on such ground cannot be countenanced. We, therefore, disapprove the action taken by the State.

17. In the light of foregoing discussion, we allow the appeal, set aside the impugned orders [Mohd. Zamil Ahmad v. State of Bihar, 2013 SCC OnLine Pat 778] , [Mohd. Zamil Ahmad v. State of Bihar, CWJC No. 5713 of 2006, order dated 8-11-2010 (Pat)] and in consequence allow the writ petition filed by the appellant (writ petitioner) and quash the appellant's termination order dated 23-6-2005 (Annexure P-4 of SLP).

18. As a consequence thereof, the respondent State is directed to reinstate the appellant in service with all consequential benefits such as payment of full back wages payable from the date of termination (23-6-2005) till the date of reinstatement in service. The appellant is also



entitled to claim his seniority and notional promotions as per the rules. It be fixed accordingly.

19. Let the appellant be reinstated in service within a month as an outer limit and the arrears of back wages, as directed, be paid to the appellant within three months by the respondent State.

20. Cost of this appeal is quantified at Rs 5000 and the same be paid to the appellant by the respondent State along with the arrears of back wages."

18. The respondents cannot, after having considered the petitioner's case and granted him compassionate appointment, seek to cancel the compassionate appointment after several years on the basis of the very facts which were available to them at the time of compassionate appointment, particularly when there is no finding of fraud or deliberate suppression against the petitioner.

19. The subsequent conduct of the parties is also important. The impugned order was passed on 18.02.2019. The petitioner immediately approached this Court and, on 08.03.2019, the operation of the impugned order was stayed. As a result, the petitioner has continued in service from 08.03.2019 till the present time. Thus, the petitioner has remained in service for more than seven years after the interim order and for approximately ten years from the date of his initial appointment. The petitioner has, therefore, continued to discharge his duties under the protection granted by this Court throughout this period.

20. In *Union of India v. K.P. Tiwari, (2003) 9 SCC 129*, the Supreme Court considered the effect of long continuation in service in a case concerning compassionate appointment. The Supreme Court declined to



disturb the existing position after the employee had remained in service for a substantial period, keeping in view the consequence of uprooting the employee from his livelihood.

21. The principle in ***K.P. Tiwari*** (supra) is relevant in the present case. The petitioner has continued in service for more than seven years pursuant to the interim protection granted by this Court. At this stage, cancellation of his compassionate appointment would unsettle a position which has continued for several years and would have serious consequences for the petitioner.

22. The relevant part of order passed in ***K.P. Tiwari*** (supra) reads as under;

“2. The Tribunal in the first instance merely directed to consider the case of the respondent afresh for appointment on compassionate grounds in relaxation of the educational qualification on merits and the matter was disposed of. Thereafter, the said order was reviewed by another application when the various circumstances of the death of the father of the respondent, the brother being in employment and living separately not supporting the family of the respondent, were considered and the matter had been pending consideration for a long time and in view of the special circumstances directed that the respondent be provided with an employment within one month from the date of the receipt of the order.

3. During the pendency of these proceedings by an order made on 1-10-1996, the respondent has already been provided with an employment subject to the result of these appeals.

4. It is unnecessary in this case to examine either questions of law or fact arising in the matter. Suffice to say that the respondent has been appointed now and has been in service for more than five years. We do not



think, it would be appropriate to disturb that state of affairs by making any other order resulting in uprooting the respondent from his livelihood.

23. The fact that the petitioner continued in service under an interim order does not by itself create a permanent right in his favour. However, the period of such continuation is a relevant circumstance while deciding the final relief. The Court cannot ignore the fact that the petitioner has actually remained in service and discharged his duties for more than seven years under the protection granted in the present proceedings.

24. This Court also finds support from its recent decision in ***Surendra Singh v. State of M.P., W.P. No.13788 of 2021, decided on 02.09.2025.*** In that case also, compassionate appointment was subsequently cancelled after a long period. This Court, relying upon the principles laid down by the Supreme Court in ***Md. Zamil Ahmed*** (supra), considered the fact that the relevant circumstances were already within the knowledge of the authorities at the time of compassionate appointment and that there was no suppression by the employee. The Court declined to disturb the compassionate appointment after such a long period.

25. The same principle deserves to be applied in the present case. The petitioner was appointed on compassionate basis in the year 2016 after consideration of his case by the Screening Committee. He completed his probation. His appointment was cancelled in 2019. The petitioner immediately challenged the order and obtained interim protection on 08.03.2019. Since then, he has continuously remained in service.



Another important consideration is that there is no finding of fraud, manipulation or deliberate suppression against the petitioner. The petitioner had specifically explained his relationship with the deceased employee and the circumstances in which he and his family were dependent upon her. These facts were available to the authorities before the appointment was granted.

26. It is true that nomination in the service records and actual dependency cannot, by themselves, override an express eligibility condition under the policy. However, these facts are relevant to the examination of the petitioner's claim and the decision taken by the Screening Committee. The Court is not holding that every grandson is entitled to compassionate appointment. The question is whether the appointment granted in the particular circumstances of this case could properly be cancelled after the relevant facts had already been examined by the authorities and no fraud or deliberate suppression was found. The objection raised by the intervener also requires consideration. The intervener is the daughter of the deceased employee and is entitled to raise any grievance available to her in accordance with law. However, the present petition concerns the legality of the cancellation of compassionate appointment. It is not a proceeding to decide succession to the estate or retiral dues of the deceased employee.

27. So far as the question of dependency is concerned, the petitioner has stated that after the death of his father, he, along with his widowed mother, two sisters and younger brother, was living with and dependent upon his grandmother, Late Smt. Krishna Devi. The petitioner's claim is



supported by the fact that his case was considered by the Screening Committee and his appointment was recommended on that basis. On the other hand, there is no material on record to show that the intervener, being the daughter of the deceased employee, was dependent upon her mother or that she was maintaining the family of the deceased employee. Merely because the intervener is the daughter of the deceased employee, her claim cannot automatically be treated as superior to that of the petitioner. The question of compassionate appointment is required to be examined in accordance with the applicable policy and the facts placed before the competent authority. In the present case, the petitioner's claim of dependency was considered by the Screening Committee before his appointment, whereas no material has been brought on record by the intervener to establish her own dependency upon the deceased employee.

28. It is also relevant that the interim order dated 08.03.2019, staying the operation of the impugned cancellation order, has remained in force during the pendency of this petition. No application for vacating the interim order has been filed by the intervener. Thus, the interim protection granted to the petitioner has continued, and he has continued to discharge his duties during this period. This circumstance, by itself, does not create an absolute right in favour of the petitioner, but it is a relevant factor to be considered while deciding the final relief, particularly when the petitioner has continued in service for several years under the protection of this Court.



29. Therefore, the present case is not one where the petitioner obtained compassionate appointment by misrepresentation and the authorities subsequently discovered the fraud. Rather, the authorities themselves considered the relevant facts and granted the compassionate appointment. The subsequent cancellation is based upon a different interpretation of the petitioner's eligibility under the policy.

30. The Court is conscious of the fact that an appointment contrary to the governing rules cannot ordinarily be protected merely because some time has passed. However, the present case involves additional circumstances: the petitioner's case was considered by the competent authority; there is no finding of fraud or suppression; he was permitted to join and complete probation; his appointment was cancelled after a considerable period; and, immediately thereafter, this Court stayed the cancellation and he has remained in service for more than seven years. In these circumstances, the principles laid down in *Md. Zamil Ahmed* (supra) and *K.P. Tiwari* (supra) become relevant. The Court is required to consider not merely the position existing on the date of the impugned order but also the subsequent facts which have occurred during the pendency of the litigation.

31. The Court is therefore of the considered opinion that, in the peculiar facts of the present case, the petitioner should not be deprived of his employment at this stage.

32. Accordingly, the impugned order dated 18.02.2019 passed by respondent No.3 is hereby quashed.



33. The respondents are directed to permit the petitioner to continue in service on the post of Dawasaj. The interim order dated 08.03.2019 shall stand merged with this final order.

34. The petitioner shall be treated as continuing in service from the date of his initial appointment dated 29.08.2016. The period during which the petitioner has continued in service pursuant to the interim order dated 08.03.2019 shall be treated as continuous service for all service purposes.

35. Since the petitioner has actually discharged his duties during the period of his continuation pursuant to the interim order, the competent authority shall consider and release all the consequential benefits including monetary benefits admissible to him in accordance with law.

36. It is clarified that the relief granted by this Court is based upon the peculiar facts of the present case, namely, that the petitioner's case was considered by the competent authorities before granting compassionate appointment, the relevant facts were within the knowledge of the respondents, there is no finding of fraud or suppression against the petitioner, he completed his probation, and he has continuously remained in service since 08.03.2019 pursuant to the interim order passed by this Court.

37. The writ petition is accordingly **allowed**. No order as to costs.

38. Pending application(s), if any, shall stand closed.

(ANAND SINGH BAHRAWAT)
JUDGE

Vpn/-