

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 13539/2023

Rohit Kumar Sharma S/o Late Om Prakash Sharma, Aged About 31 Years, R/o Gurjar Mohalla, Mahwa Tehsil Mahwa District Dausa Rajasthan.

----Petitioner

Versus

1. State Of Rajasthan, Through Its Principal Secretary, Of Public Hearth Engineering Department, Jaipur, Rajasthan
2. Chief Engineer, Public Health Engineering Department, Jaipur, Rajasthan.
3. Superintending Engineer, Public Health Engineering Department, Dausa Circle, Dausa, Rajasthan

----Respondents

For Petitioner(s) : Mr. Anshuman Shukla for
Mr. Indresh Sharma

For Respondent(s) :

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

31/10/2023

1. By way of instant writ petition filed under Article 226 of the Constitution of India, petitioner is seeking direction against respondents to consider the case of petitioner for grant of compassionate appointment in place of his father late Shri Om Prakash Sharma, a Store Munshi in Public Health Engineering Department, Dausa who died during service on 01.06.2017.
2. Heard learned counsel for the petitioner and perused the material available on record.
3. At the outset, it appears from the record that petitioner submitted an application for grant of compassionate appointment

on 01.12.2021, which was considered on merits and has been rejected vide orders dated 16.11.2022 & 24.11.2022 (Ann.3) holding that according to character and antecedents of petitioner being accused in the criminal case and in view of Circulars of the Government of Rajasthan, petitioner is not eligible for grant of compassionate appointment. Orders dated 16.11.2022 & 24.11.2022 have not been challenged by the petitioner in the present writ petition.

4. The factual matrix of the case is not in dispute that father of petitioner Shri Om Prakash Sharma was a Store Munshi and while posting at Public Health Engineering Department, Dausa, Circle Sub-Division Mahua, he passed away on 01.06.2017. The petitioner did not apply for compassionate appointment thereafter within 45 days, since the petitioner has been convicted for offence under Section 306 IPC by the Court of Additional Session Judge, Bandikui Camp-Mahua in Session Case No.22/2012 (State of Rajasthan Vs. Rohit Kumar Sharma & Ors.) pursuant to FIR No.186 dated 19.04.2012. Petitioner has been sentenced for rigorous imprisonment for seven years alongwith penalty of Rs.5,000/- . Petitioner has preferred Criminal Appeal No.538/2015 against his conviction and sentence vide judgment dated 11.06.2015 and in the criminal appeal, Hon'ble High Court, vide order dated 11.02.2021 stayed the conviction of petitioner till pendency of the appeal (Ann.4). Thereafter, it appears that the petitioner moved an application on 01.12.2021 seeking compassionate appointment in place of his father.

5. This Court finds that the application has been filed by the petitioner after a delay of about 4 and 1/2 years, only when his



conviction in the criminal case for offence under Section 306 IPC was stayed vide order dated 11.02.2021 during the pendency of S.B. Criminal Appeal NO.538/2015. It is not in dispute that the petitioner has been remained accused for offence under Section 306 IPC i.e for abetment of suicide and has been convicted by the Judicial Court whereagainst Criminal appeal against his conviction is pending. That apart, one FIR No.84/2021 was also lodged against the petitioner at Police Station Kotwali, Dausa for offence under Sections 392, 365, 34 IPC. Petitioner entered into compromise with the complainant and on the basis of mutual settlement/ compromise, criminal proceedings arising out of FIR NO.84/2021 were quashed vide order dated 15.07.2021 passed in SB Criminal Misc. Petition No.2159/2021 (Ann.5).

In this view, the character and antecedents of petitioner has not been found clean and therefore, respondents, after placing reliance upon Circulars of the State Government dated 04.12.2019 and 26.10.2021 have not found the petitioner eligible for grant of compassionate appointment. It may be noted that although the decision of respondents, declining to grant compassionate appointment to petitioner is not under challenge, however same does not call for any interference by this Court in exercise of powers of judicial review.

6. In celebrity judgment of the Hon'ble Suprme Court in case of **Avtar Singh Vs. Union of India & Ors. [2016 (8) SCC 471]**, the Hon'ble Supreme Court has observed as under:-

"Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee. In

the concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed, to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully, the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence, etc. have to be considered. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee."

7. For discussions made hereinabove, no case in favour of petitioner for issuing direction to grant compassionate appointment is made out, as a result, the writ petition is devoid of substance and the same is hereby dismissed.
8. Stay application and any other pending application, if any, stand disposed of.

(SUDESH BANSAL),J