

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO. 1413 OF 2015

Abdul Rahim S/o Fakir Mohammad Khan
Age : 35 years, Occ : Nil,
R/o Fullambri, Tq. Fullambri,
Dist. Aurangabad.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through the Secretary,
Urban Development Department,
Mantralay, Mumbai-32.
2. The Commissioner,
Aurangabad Municipal Corporation,
Aurangabad.

..RESPONDENTS

...
Advocate for Petitioner : Mr. A.S. Shinde h/f Mr. Latange
V.P.

AGP for Respondent/State : Mr. S.K. Kadam
Advocate for Respondent no.2 : Mr. Y.K. Bobade

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CORAM : S.S. SHINDE & P.R. BORA, JJ.

Dated: March 30, 2015

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ORAL JUDGMENT (P.R. BORA,J)

Rule. Rule made returnable forthwith. By
consent of the learned counsel appearing for the

parties, heard finally.

2. The petitioner has filed the present Petition seeking directions to Respondent No.2 for considering his case for issuing compassionate appointment to him on Class-IV post.

3. As contended in the Petition, the mother of the petitioner was in the employment of Respondent No.2 as a Sweeper. She died in the year 1995. She was appointed as Sweeper in the year 1980 and was also granted permanency. She died because of the accidental burn injuries.

4. It is the further contention of the petitioner that, on 17.06.1996 he first applied to Respondent No.2 for getting the compassionate appointment on the post of his mother. It is the further contention of the petitioner that, after filing of an application as above, he was constantly pursuing his request for getting the compassionate appointment, but it was not positively responded by Respondent No.2. It is the further contention of the petitioner that, ultimately in the year 2010, vide its letter dated 14.01.2010, Respondent No.2 rejected the prayer of the petitioner on the ground that, the application was not submitted by the petitioner within one year from the date of the death of his

mother.

5. The learned counsel appearing for the petitioner submitted that, that claim of the petitioner of getting appointment on the compassionate ground on the post of a Sweeper in place of his deceased mother has been wrongly rejected by Respondent No.2. The learned counsel pointed out that, mother of the petitioner died on 30th October, 1995 and the first application was submitted by the petitioner seeking the compassionate appointment on 17.06.1996 i.e. within the period of one year. The learned counsel invited our attention to the copy of the acknowledgment obtained by the petitioner of his application dated 17.06.1996 submitted to Respondent No.2 claiming compassionate appointment. The learned counsel, therefore, submitted that, the order dated 14.01.2010 passed by Respondent No.2 needs to be set aside and Respondent No.2 needs to be directed to consider the case of the petitioner in accordance with law.

6. The learned counsel appearing for the Respondent opposed the submissions made on behalf of the petitioner. The learned counsel supported the impugned order.

7. We have considered the submissions made

on behalf of the petitioner as well as the Respondent Corporation. We are not inclined to accept the contentions of the present petitioner and the Petition so filed by him deserves to be dismissed only on the ground of laches and delay. The mother of the petitioner, in whose place the petitioner is seeking compassionate appointment, had admittedly died in the year 1995 i.e. almost prior to 20 years. It is true that, the petitioner has filed the xerox copy of acknowledgment of an application purportedly given for seeking appointment on 17.06.1996. However, the copy of the said application is not placed on record. Even if, it is assumed that such application was submitted by the petitioner on 17.06.1996, the material on record demonstrates that there was no genuine follow up of the said application. After 1996, the first reminder seems to have been sent by the petitioner on 15.02.1999 i.e. after the gap of around three years. Thereafter upto 2009, the petitioner seems to have not taken any follow up action and even thereafter the petitioner does not seem to have shown any promptness and diligence for securing the appointment on compassionate ground.

8. The question, therefore, arises is the petitioner really in need of such appointment ? As consistently said by the Hon'ble Apex Court,

compassionate appointment is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood. The Hon'ble Apex Court in a recent judgment in the case of **Chief Commissioner, Central Excise Excise and Customs, Lucknow and others V/s Parbhat Singh**¹ has restated the effect of the delay in seeking judicial redress in cases of compassionate appointment.

9. In the case before the Hon'ble Apex Court, the Respondent therein, namely Prabhat had for the first time, sought the judicial redress by approaching the Central Administrative Tribunal, Allahabad bench in 2005, in regard to his appointment on compassionate ground when his father on whose place he was seeking compassionate appointment had died in the year 1996. Referring to the intervening period of around 9 years, in the death of father of the petitioner and filing of application before CAT by the Respondent therein, the Hon'ble Apex Court held that, by such time after the long gap of 9 years, there was no surviving right in favour of the respondent for appointment on compassionate ground. The Hon'ble Apex Court has observed that, the very object of making provision for

1 (2012) 13 SCC 412

appointment on compassionate grounds, is to provide succor to a family dependent on a government employee, who has unfortunately died in harness. The Hon'ble Apex Court has further observed that delay in seeking such a claim is an antithesis for the purpose for which compassionate appointment was conceived. It is further observed that delay in raising such a claim is contradictory to the object sought to be achieved.

10. In an another judgment, in the case of **Local Administration Department and another V/s M. Selvanayagam alias Kumaravelu²** the Hon'ble Apex Court has held that:-

“an appointment made many years after death of employee or without due consideration of financial resources available to his/her dependants and financial deprivation caused to dependants as a result of his death, simply because claimant happened to be one of dependants of deceased employee would be directly in conflict with Article 14 and 16 of the Constitution, and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.”

2 (2011) 13 SCC 42

11. In the above case before the Hon'ble Apex Court, the concern employee had died in the year 1988, leaving behind a widowed wife and two sons. The widowed wife did not claim any appointment on compassionate ground. The sons were minor. After one of the sons became major, an application was preferred seeking compassionate appointment. Such application was preferred after seven and half years of the death of deceased employee. The request was rejected by the employer i.e. Municipal Authority for two reasons; first, that the widow had not made any request for her appointment on compassionate ground and the second reason was that, following the death of employee concern, the family was given Rs. 26,674/- as terminal benefits besides family pension to the widow. Thus, the dependants of the deceased employee were not left completely without any financial resources. The High Court directed the Municipal Authorities to consider the request for compassionate appointment, whereupon the Municipal Authorities went in appeal before the Apex Court. The Hon'ble Apex Court upheld the decision of the Municipal Authorities observing that, that the Municipal Authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram (employee concerned) had been able to tide over the first impact of his death. Hon'ble

Apex Court further observed that in the fact situation, the case of the respondent did not come under the scheme of compassionate appointments.

12. In the instance case also, there is every reason to believe that, the petitioner had been able to tide over first impact of death of his mother. After 20 years now, it is difficult to accept that the petitioner or his family is in dire straits as a result of death of his mother. We reiterate that from the material placed on record, it is difficult to believe that the petitioner was genuinely making efforts and was following up the proposal seeking compassionate appointment. It is writ large that the petitioner was not serious enough in securing compassionate appointment from the fact that though his claim for compassionate appointment was rejected by the Municipal Authority, vide its letter dated 14.01.2010, juridical redress has been sought by the petitioner after the period of more than five years by filing the present Petition on 22.01.2015. As held by the Hon'ble Supreme Court in **Prabhat Singh's case (cited supra)**, inordinate delay committed by the petitioner in seeking judicial redress is enough to reject the Petition, so filed by the petitioner. In the circumstances, though it has been argued by the learned counsel for the petitioner that the petitioner's right cannot be defeated on the ground of delay caused by the Authorities, we

are not inclined to accept the request of the petitioner, for the reasons stated hereinabove.

13. The Hon'ble Apex Court in the case of **Prabhat Singh (cited supra)** has further observed that:-

“19. The courts and tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. The courts are not supposed to carry Santa Claus's big bag on Christmas eve to disburse the gift of compassionate appointment to all those who seek a court's intervention. The courts and tribunals must understand that every such act of sympathy, compassion and discretion wherein directions are issued for appointment on compassionate grounds could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion.”

14. In the aforesaid circumstances, we are not inclined to give any relief to the present

petitioner. In the result, the following order :-

ORDER

- (i) The Petition is dismissed.
- (ii) Rule stands discharged accordingly.

Sd/-
(**P.R. BORA, J.**)

Sd/-
(**S.S. SHINDE, J.**)

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