

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 1671 OF 2014

KALPANA DHARAMNATH GONDHALI

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Patil Bipinchandra K and Mr. Surendra U.
Bondarde

AGP for Respondents: Mrs. S. A. Dhumal

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**CORAM : S. V. GANGAPURWALA &
V. K. JADHAV, JJ.****DATE : 17th June, 2015****PER COURT :**

1. Mr. Patil, the learned counsel for the petitioner submits that the petitioner had filed original application, which came to be allowed. According to the learned counsel, the respondents were directed to appoint the petitioner on compassionate ground by the Maharashtra Administrative Tribunal. However, the respondents did not take any action. Even contempt petition was filed, wherein the respondents filed affidavit that they would appoint the petitioner, however appointment was not made. Subsequently, in the year, 2008, name of the petitioner was deleted from the waiting list of persons seeking appointment on compassionate ground. Learned counsel submits that the person junior to the petitioner in the said list is given appointment in April, 2008. The petitioner is highly qualified for the said post. Learned counsel submits that in the year 2010, the Government Resolution has been introduced thereby raising age limit for appointment on compassionate ground to 45 years. As the petitioner was entitled to the benefit of the said resolution, name of the petitioner ought

to have been included in the said list. The same was also not done. Learned counsel submits that respondents were duty bound to comply the order of the tribunal dated 21.06.2007.

2. Learned counsel placed reliance on the judgment of this Court in the case of **Shankar Ramakant Akkavar and another Vs. State of Maharashtra** reported in **2009 (6) ALL MR 284** to contend that even the petitioner is entitled for appointment on compassionate ground. The learned counsel submitted that the petitioner is not at fault and if the petitioner is not at fault, the respondents cannot be allowed to take benefit of their own wrong. For the said purpose, the learned counsel relies on the decision of this Court in the case of **Smt. Daman Parmanand Tembhurnikar Vs. Union Bank of India and others** copy of which is given from **2007 (7) LJSOFT 101**. Learned counsel also relies on the decision of the **Division Bench of this Court in Writ Petition No. 5904 of 2012 dated 20th September, 2013**.

3. Learned AGP submits that the petitioner completed 40 years of age in December, 2007 and as such his name was deleted from the waiting list of compassionate appointment. Person junior to the petitioner is given appointment in April, 2008. On the said date, the petitioner could not have been considered as the petitioner had crossed 40 years of age on the said date.

4. The Government resolution extending age limit from 40 to 45

years was introduced in the year 2010. According to the learned AGP, once the name of the petitioner stood deleted from the list, it could not have been reintroduced. According to the learned AGP, appointment on compassionate ground is not to be claimed as of right. Learned AGP relies on the judgment of the Apex Court in the case of **MGB Gramin Bank Vs. Chakrawarti Singh** reported in **2013 AIR (SCW) 4801**.

5. There cannot be a dispute on the proposition that the appointment on compassionate ground cannot be claimed as of right, however the beneficial scheme is introduced to provide succor to a bereaved family. The petitioner can be said to be an unfortunate one. In 2007 the petitioner completed 40 years of age, however till that date no appointment could be made. It does not appear that there was vacancy. No person junior to the petitioner in the list is appointed till that date. After 2007, the petitioner could not have been considered having crossed the maximum age limit of 40 years. Person junior to the petitioner was appointed in April, 2008 i.e. after the petitioner has crossed age of 40 years. For the first time vide Government resolution dated 6th December, 2010, age limit was extended to 45 years. On the said date, name of the petitioner did not appear in the list nor there were any direction of the Government to include name of the petitioner in the list of candidates to be considered for appointment on compassionate ground.

6. In fact the petitioner was also litigating since 2002. The petitioner could have been considered till the age of 45 years. The petitioner has

crossed the outer age limit of 45 years also in the year 2012 itself. As such, now the prayer of the petitioner cannot be considered. Prayer for compensatory cost could have been considered had any person junior to the the petitioner would have been appointed prior to the petitioner attaining age of 40 years.

7. In the light of above, writ petition is dismissed. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

JPC