

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.4586 OF 2015

Puja @ Maya W/o Tanaji Gaikwad,
Age 34 years, Occu: Unemployed
R/o at Post Chitegaon,
Tq. Paithan, Dist : Aurangabad.

... Petitioner

Versus

- 1] The State of Maharashtra
Through Department of Agriculture
& Marketing, Mantralay, Mumbai.
- 2] Director of Co-operation (Marketing)
Maharashtra State, Pune.
- 3] Uchhatam Agricultural Produce
Market committee, Latur.
- 4] Secretary of Uchhatam Agricultural
Produce Marketing committee,
Latur

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Respondents

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Mr. D.S. Manorkar , Advocate holding for
Mr. S.J. Rahate, Advocate for petitioner
Mr. K.J. Ghute Patil, A.G.P. for respondents /State

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

DATED : 27-04-2015

ORAL JUDGMENT :(P.R. BORA, J.)

1. Rule. Rule made returnable forthwith. By consent of the
learned counsel appearing for the parties, heard finally.

2. The petitioner has filed present petition seeking direction against the respondents for considering her case for issuing compassionate appointment to her on the post of peon, in the office of respondent No. 3.

3. As averred in the petition, the husband of the petitioner was in the employment of respondent No. 3. He entered into the services of respondent No. 3 in the year 2000. Unfortunately he died in a road accident on 25-01-2004. Petitioner, then, submitted an application to the respondents for getting compassionate appointment on Class-IV post in place of her husband. It is the contention of the petitioner that, initially she was asked to bring legal heirship certificate. She, therefor applied to the Civil Judge, Senior Division, for grant of such legal heirship certificate which was received to her on 05-05-2009. It is the contention of the petitioner that, she submitted the said legal heirship certificate in the office of respondent No. 3 with a prayer for her appointment on compassionate ground. It is the further contention of the petitioner that, thereafter though the petitioner was constantly pursuing the matter, there was no positive response from the side of the respondents. It is her further contention that, vide communication dated 05-02-2011 she was informed that, as she did not remain present in the office of respondent No. 3 on

10-11-2010 despite communication dated 02-11-2010, her representation for compassionate appointment was disposed of. It is the further contention of the petitioner that, on 15-02-2011 she again made a representation and revived her request for compassionate appointment. However, it has not been considered and in such circumstances, it is her contention that she is required to file the present petition.

4. Learned counsel appearing for the petitioner submitted that, the claim of the petitioner seeking compassionate appointment has been wrongly rejected by the respondents. The learned counsel pointed out that, after the death of her husband, the petitioner was constantly following-up with the respondents to get the appointment on compassionate ground. The learned counsel brought to our notice the copies of representations time to time made by the petitioner with the respondents. The learned counsel further submitted that on some technical ground that, on 10-11-2010 petitioner remained absent in the office of respondent No. 3, her application has been rejected. The learned counsel, therefore, prayed for allowing the petition.

5. Learned counsel appearing for the respondents opposed the submissions made on behalf of the petitioner. The learned

AGP submitted that the request of the petitioner has been rightly turned down.

6. We have considered the submissions made on behalf of the petitioner as well as the respondents. We are not inclined to accept the contentions of the petitioner and the petition deserves to be dismissed only on the ground of laches and delay. The husband of the petitioner in whose place the petitioner is seeking compassionate appointment, had admittedly died in the year 2004 i.e. almost prior to 11 years. It is true that, the petitioner had applied for compassionate appointment immediately thereafter by filing an application dated 04-02-2004. However, the record further shows that, thereafter there was no proper follow-up from the side of the petitioner. The material on record show that after filing application in February-2004, next communication / representation is made by the petitioner in the year 2009 i.e. after lapse of about five years. Though, it is stated that legal heirship certificate was required by the respondent and petitioner was therefore, required to approach the Civil Court for getting legal heirship certificate, no further particulars are provided as to when such application was made for seeking legal heirship certificate and when such legal heirship certificate was issued in favour of the petitioner. The copy of the said legal heirship certificate is

also not placed on record. The further communication is made by the petitioner two years thereafter by sending one more representation dated 31-01-2011.

7. The material on record further show that, though vide letter dated 05-02-2011, the petitioner was informed that, her application for compassionate appointment has been disposed of since she remained absent on the given date before the Committee, she took four years to approach this Court. The question, therefore, arises was 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.

8. 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,

¹ (2012) 13 SCC 412

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 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.

9. In an another judgment, in the case of **Local Administration Department and another V/s M. Selvanayagam alias Kumaravelu**² 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

² (2011) 13 SCC 42

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.”

10. 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.

11. In the instant case also, there is every reason to believe that, the petitioner has been able to tide over first impact of death of her husband. After 11 years now, it is difficult to accept that the petitioner or his family is in dire straits as a result of death of her husband. We reiterate that from the material placed on record, it is difficult to believe that the petitioner was genuinely 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 her claim for compassionate appointment was rejected by respondent No. 3 vide its letter dated 05-02-2011, judicial redress has been sought by the petitioner after the period of about four years by filing the present petition on 13-04-2015. 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.

12. 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.

(P.R. BORA, J.)

(S.S. SHINDE, J.)