

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6350 OF 2015

DINESH KRISHNA DEORAJ
VERSUS
STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioner : Mr. Umakant R. Awate and Mr. B. N. Sharma
AGP for Respondent No.1 : Mrs. S.G. Chincholkar.

CORAM : S.S. SHINDE & A.M. BADAR,JJ.
DATE : 1st October, 2015.

PER COURT:

1] Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2] It is the case of the petitioner that the father of the petitioner, namely, Shri Krushna Hiranman Devraj was working as Assistant Teacher under the control of respondent No.2 zilla Parishad School, Jalgaon since June, 1984. Unfortunately, on 13.11.2005, due to road accident, the father of petitioner died. The father of the petitioner, at the time of his death was survived by his widow Sindhubai Krushna Devraj, elder brother Nilesh, the petitioner, and one married sister Yogita and one unmarried sister-Ganga. Since the lifetime of his father, the elder brother, namely, Nilesh Krushna Devraj, was living separately and never shouldered the responsibilities of the family. As such, the petitioner accepted the responsibility of his family, after death of his father.

3] It is contended that the petitioner is possessing qualifications of B.A., M.S.W./D.L.L. and L.W. The petitioner also completed course of

MS-CIT.

4] The petitioner filed an application, thereby requesting to give appointment on compassionate ground with the office of respondent no.2. Petitioner annexed all relevant documents. Alongwith said application, the petitioner had annexed the consent letter given by the mother, sister and wife. Petitioner contended that he is in desperate need of employment so as to meet the financial requirements.

5] On 9th August, 2012, respondent No.2 - Chief Executive Officer, Zilla Parishad, Jalgaon directed the Block Development Officer, Panchayat Samiti, Jalgaon to conduct inspection and submit the report about claim of the petitioner for appointment on compassionate ground. On 16th September, 2012, the Block Development Officer, Panchayat Samiti, Jalgaon conducted family inspection of the petitioner. The petitioner filed affidavit stating therein that elder brother of the petitioner, namely, Nilesh is working on the Post of Police Head Constable with Nasik (Rural) Police Station, and during the lifetime of the father, he was living separately and never shouldered the family responsibilities. On 1st April, 2013, respondent No.2 Chief Executive Officer, Zilla Parishad, Jalgaon informed the petitioner that as the elder brother of the petitioner is in Government employment, the claim of the petitioner cannot be considered for appointment on compassionate ground.

6] Learned counsel for the petitioner submits that respondent No.2 ought to have accepted the enquiry report of the Block Development

Officer, Panshayat Samiti, Jalgaon and considered the claim of the petitioner for appointment on compassionate ground. There was no direct evidence/material with the respondent No.2 to reject the report of the Block Development Officer, Panchayat Samiti, Jalgaon. It is submitted that merely because elder brother of the petitioner is in Government service, cannot be a ground to reject the claim of the petitioner in view of the affidavit filed by the petitioner that the said elder brother, namely, Nilesh Devraj is separately residing and not shouldering the responsibilities of the family of the petitioner.

7] In support of the contention that the claim of the petitioner should not have been rejected on the ground that his elder brother is in Government service, counsel for petitioner placed reliance on the unreported judgment of the Division bench of this Court in W.P. No. 7056 of 2007, in the matter of Nagorao Jagannath Pandit Vs. Chief Executive Officer and others, decided on 12th March, 2008 and submitted that in similar facts situation in the said case, the Division Bench of this Court has held that merely because brother of the petitioner therein was in Government service was no valid ground to reject the claim of the petitioner for compassionate appointment.

8] On the other hand, learned counsel for respondent No.2 submits that when the application was filed by the petitioner the necessary documents/information was not produced on record, which would suggest that petitioner's elder brother was residing separately and was not

shouldering the responsibilities of the family. It is only during the course of enquiry, the petitioner filed the affidavit and stated that the elder brother of the petitioner, namely, Nilesh who is serving in the Government is not shouldering the financial responsibilities of the family and residing separately. Therefore, counsel for respondent No.2 submits that the impugned communication may not be interfered with and petition may be rejected.

9] We have heard the counsel for respective parties. The fact that respondent No.2 appointed the Block Development Officer, Panchayat Samiti, Jalgaon for conducting an enquiry/inspection is not in dispute. After conducting the enquiry, the said officer submitted report to the respondent No.2 by letter dated 26.9.2012, wherein, there is reference made to the affidavit filed by the petitioner stating therein that elder brother of the petitioner is residing separately and not shouldering financial responsibilities of the family. There are other details mentioned in the said report.

10] Upon perusal of the said enquiry report, which favours contention of the petitioner that the elder brother of the petitioner, namely, Nilesh is residing separately and not shouldering the responsibilities of the family, in absence of any contra evidence/material in possession of the respondent No.2, respondent No.2 should have accepted the said enquiry report, and could not have rejected the claim of the petitioner on the ground that, the elder brother of the petitioner is in Government service, and hence the petitioner is not entitled for appointment on compassionate

ground.

11] It further appears from the material placed on record that, except the reason that petitioner's elder brother is in Government employment, no other reason is assigned in the impugned communication by the respondent No.2, addressed to the petitioner.

12] In the light of the discussion in foregoing paragraphs, in our considered view, the petitioner's claim for appointment on compassionate ground could not have been rejected on the ground, which is mentioned in the impugned communication. Accordingly, we quash and set aside the impugned communication, and direct the respondent no.2 to take appropriate decision on merits of the claim of the petitioner, as expeditiously as possible, however, within a period of 8 weeks from today and if the petitioner's claim is found to be genuine and acceptable, respondent No.2 shall include his name in the list prepared for making appointments on compassionate ground and communicate the same to the petitioner. If it is necessary, respondent No.2 can call the petitioner for hearing.

13] Rule made absolute in above terms. Petition stands disposed of. Parties to act upon authenticated copy of this order.

[A.M. BADAR, J]

[S.S. SHINDE, J]

grt/-