

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

**WRIT PETITION NO. 10820 OF 2014**

Prashant Pandharinath Patil (Bagul)  
Age – 23 Years, Occu. Nil,  
R/o. Gadkhamb, Post Nagaon,  
Taluka Amalner, Dist. Jalgaon.

... **PETITIONER**

VERSUS

1. The State of Maharashtra  
Through its Secretary  
Department of Forest,  
Mantralya, Mumba – 32.
2. The Forest Development Corporation  
of Maharashtra Ltd.  
(Government of Maharashtra Undertaking)  
Through its Managing Director  
Nagpur, Rawel Plaza, Plot No.12,  
Kadbi Chowk, Kamptee Road,  
Nagpur – 440004 Dist. Nagpur.
3. The Divisional Manager,  
The Forest Development Corporation  
of Maharashtra Ltd., Nashik Project,  
Vanvikas Complex, Opp. Old ITI,  
Kalika Mandir Marg, Nashik,  
Dist. Nashik.

... **RESPONDENTS**

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Mr. Girsih Rane, Advocate for Petitioner;  
Mr. V.H. Dighe, AGP for State  
Mr. Parag Shahane, Advocate for Respondents No. 2 and 3

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**CORAM : S.S. Shinde and P.R. Bora, JJ.**

**RESERVED ON : 23<sup>rd</sup> April, 2015**

**PRONOUNCED ON : 28<sup>th</sup> April, 2015**

**JUDGMENT: (Per : 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 the present Petition seeking directions to the Respondents to appoint the Petitioner on the suitable post on compassionate ground. The Petitioner had also prayed for quashment of the communication dated 16.10.2014 issued by Respondent No.3, thereby rejecting the request of the Petitioner to appoint him on compassionate ground.

3) As contended in the Petition, the father of the Petitioner was in the employment of Respondent No.3 as a 'Forest Guard'. He died while on duty on 15.01.2004, leaving behind four children and wife as his legal heirs. As stated in the Petition, the mother of the Petitioner had died prior to his father. However, the step mother was surviving. The other three children were three daughters of the deceased. As averred in the Petition, Petitioner was minor at the time of the death of his father. The Petitioner is stated to have born on 12.08.1991. It is the further contention of the Petitioner that, after he became major and after he became aware of the legal position in regard to his entitlement of getting compassionate appointment, he preferred an application seeking compassionate appointment. It is the further case of the Petitioner that, he consistently followed his request for compassionate appointment. However, it was not considering and vide letter dated 16.10.2014, it was ultimately turned down on the ground that, he did not prefer the application

with one year from the death of his father.

4) Shri Girish Rane, the learned Counsel appearing for the Petitioner submitted that, the claim of the Petitioner has been wrongly rejected by Respondent No.3. The learned Counsel submitted that, on the date of the death of the father of the Petitioner i.e. in the year 2004, according to the then existing Rules for grant of compassionate appointment, the period for making application seeking such appointment was five years from the date of the death of the Government Servant. The learned Counsel submitted that, vide the Government Resolution dated 22.08.2005, the said period of five years has been reduced to one year. The learned Counsel submitted that, on the basis of the Government Resolution dated 22.08.2005, the request of the Petitioner has been turned down by Respondent No.3. The learned Counsel submitted that, since the father of the Petitioner died in the year 2004, the Rules subsequently brought into force vide Government Resolution dated 22.08.2005 would not apply to the case of the Petitioner. The learned Counsel submitted that, in so far as the case of the Petitioner is concerned, the Rules which were existing in the year 2004 would apply and according to the said Rules, the person entitled for getting compassionate appointment from the family of the deceased Government Servant was to make an application seeking appointment on

compassionate ground within the period of five years from the date of death of the Government Servant. The learned Counsel submitted that, the father of the Petitioner namely Pandharinath died on 15.01.2004, at that time, the Petitioner was minor. The learned Counsel further submitted that, the Petitioner became major on 11.08.2009 and thereafter within a period of five years, he did file an application seeking compassionate appointment on 13.03.2012. The learned Counsel submitted that, in such circumstances, the reasons stated in the communication dated 16.10.2014, is apparently erroneous and unsustainable. The learned Counsel submitted that, the Petitioner belongs to the illiterate poor family, he was not aware of legal procedures so also the about the Limitation etc. In such circumstances, according to the learned Counsel, the application submitted by the present Petitioner should not have been rejected on technical grounds. The learned Counsel submitted that, on becoming major, within five years, the Petitioner has preferred an application and as such the application so submitted by him has to be held to have been submitted within the prescribed period. The learned Counsel therefore prayed for quashing the communication dated 16.10.2014 and consequently prayed for direction against Respondents to appoint the Petitioner on the suitable post on compassionate ground.

5) The learned Counsel appearing for the Respondents opposed the submissions made on behalf of the Petitioner. The learned Counsel supported the impugned order.

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 present Petitioner and the petition so filed by him deserves to be dismissed only on the ground of laches and delay. The father 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. No doubt, at the time of death of his father, the Petitioner was aged about 13 years and was thus a minor. It is not in dispute that, the Petitioner became major on 11.08.2009. However, the Petitioner did not submit the application immediately. He took the period of more than 2 ½ years to submit such application. He submitted such application on 13.03.2012. The question therefore arises, can it be said that the Petitioner was 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 crises 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 Vs Prabhat Singh, (2012) 13 SCC 412** has restated the effect of the delay in seeking compassionate appointment.

7) In the aforesaid 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 provisions 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.

8) In an another judgment, in the case of **Local Administration Department and another V/s M. Selvanayagam alias Kumaravelu, (2011) 13 SCC 42** 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 dependents as a result of his death, simply because claimant happened to be one of the 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.”

9) 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.

10) In the instances case also, there is every reason to believe that, the Petitioner had been able to tide over first impact of the death of his father. After 11 years now, it is difficult to accept that the Petitioner or his sisters are in dire straits as a result of death of their father. 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. The contention of

the Petitioner that, since the father of the Petitioner had died in the year 2004, period for making an application seeking compassionate appointment in his place must be held to be five years as per the then existing Rule is difficult to be accepted. Even if, we decide to go by the said Rule, prescribing period of five years for filing such application, it cannot be accepted that the said period of five years would commence on the date of attaining the age of majority by the legal heir of the deceased. We reiterate that the Petitioner, for the first time submitted an application in the year 2012 i.e. after the period of about 8 years of the death of his father and after the period of above 2 ½ years of his attaining the age of majority. Thus, in no case, it can be said that the Petitioner had submitted the application within the prescribed period of limitation. In the circumstances, we do not see any error in the communication dated 16.10.2014, whereby the request of the Petitioner has been rejected by Respondent No.3. We find no merit in the Petition so filed. Hence, following order:-

**ORDER**

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

**P.R. Bora,  
Judge**

**S.S. Shinde,  
Judge**