

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

WRIT PETITION NO. 3951 OF 2015

Mohan Venkati Rathod

Age: 28 years, Occu.: Nil,

R/o Loha, Tq. Loha, Dist. Nanded

..PETITIONER

VERSUS

1. The Chief Officer,
Municipal Council, Loha,
Tq. Loha, Dist. Nanded.

2. The District Collector, Nanded,
Dist. Nanded

..RESPONDENTS

WITH

WRIT PETITION NO. 4014 OF 2015

Hari Madhavrao Pawar

Age: 26 years, Occu.: Nil,

R/o Loha, Tq. Loha, Dist. Nanded

..PETITIONER

VERSUS

1. The Chief Officer,
Municipal Council, Loha,
Tq. Loha, Dist. Nanded.

2. The District Collector, Nanded,
Dist. Nanded

..RESPONDENTS

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Mr. H.V. Patil, Advocate for petitioners.

Smt. S.S. Raut, AGP for Respondent No.1.

Mr. R.P. Bhumkar, Advocate holding for Mr. V.R. Bhumkar,
Advocate for Respondent No.2.

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CORAM : RAVINDRA V. GHUGE, J.
DATED : 7th MARCH, 2016

ORAL JUDGMENT :

1. In both these petitions, the petitioners who are similarly situated have challenged the judgment and order passed by the Industrial Court dated 19.01.2015 by which Revision ULP No. 51/2012 has been allowed.

2. The common factor involved in these two cases is that the fathers of the petitioners were the employees of the Respondent No.1-Municipal Council. They had sought voluntary retirement from service on account of medical reasons (reasons of ill health). The petitioners were appointed on compassionate basis by a resolution passed by the Municipal Council on 30.08.2008. By virtue of the appointment orders, both the petitioners joined services.

3. By communication dated 14.09.2009, Respondent No.2-District Collector informed Respondent No.1 that it had failed to

comply with the scheme made applicable for appointment on compassionate basis. The guidelines given in the Government Resolution dated 22.08.2005 have not been followed. The compassionate appointments are illegal and therefore deserve to be set aside. By orders dated 14.09.2009, the petitioners were terminated without any hearing.

4. The petitioners preferred Complaint ULP No. 90/2009 raising a grievance of non-compliance of Section 25F and 25G of the Industrial Disputes Act, 1947, failure to afford an opportunity of hearing and termination of their services for patently false reasons. Respondent No.1-Municipal Council filed its written statement and opposed the complaint. Respondent No.2-District Collector had also filed a written statement. By the final judgment and order dated 22.06.2012, the complaint was allowed and Respondent No.1-Municipal Council was directed to reinstate the petitioners in service with continuity and full back wages.

5. Respondent No.1-Municipal Council filed Revision ULP No. 51/2012 before the Industrial Court which has been allowed by

the impugned judgment. The grievance is that the Industrial Court has erroneously concluded that due to the Government Resolution dated 22.08.2005, the petitioners could not be appointed on compassionate grounds since the fathers of the petitioners had obtained voluntary retirement on medical ground and had not passed away while in services. Mr. Patil, learned Counsel for the petitioners has strenuously criticized the impugned judgment for having disregarded the principles of natural justice.

6. He further submits that if the District Collector had given a sufficient opportunity of hearing to the petitioners, they would have convinced the District Collector that their appointments were strictly as per the rules and there was no illegality in the appointments. He submits that even otherwise, the principles of natural justice cannot be given a go-bye and even if the District Collector was of the view that the appointments of the petitioners were illegal, he could have arrived at the said conclusion only after hearing the petitioners. He therefore prays for setting aside the impugned judgment and further prays for reinstatement with continuity and full back wages.

7. The learned AGP appearing on behalf of Respondent No.1-municipal council and Mr. Bhumkar, learned Counsel appearing on behalf of Respondent No.2-District Collector have opposed this petition. It is submitted that the Municipal Council did not follow the procedure as is laid down while appointing the candidates on compassionate basis. The prior approval of the District Collector is mandated. Same should have been taken before issuing the appointment orders to the petitioners.

8. It is further submitted that the earlier Government Resolution dated 08.03.1985 permitted appointment of a legal heir on compassionate grounds if the parent of the candidate has been retired or has opted for retirement on account of illness. However, by the new Government Resolution dated 22.08.2005 which the Municipal Council had lost sight of, unless the parent of the candidate passes away while in service due to illness or for any other reason, the legal heir cannot claim compassionate appointment. It is submitted that the parents of both these petitioners have taken voluntary retirement for medical reasons and

their case does not fall under clause 2(1) of the Government Resolution dated 22.08.2005 (erroneously mentioned as Clause 10 by the Industrial Court).

9. Mr. Patil has placed reliance upon the reported judgment of the Supreme Court in ***V. Sivamurthy Vs. State of Andhra Pradesh And Others, (2008) 13 SCC 730***. He points out paragraph nos. 6, 9 and 16 which read as under:

“6. On the contentions raised the following questions arise for our consideration:

(i) Whether compassionate appointment of sons/daughters/spouses of government servants who retire on medical invalidation is unconstitutional and invalid?

(ii) Whether the High Court could have considered and decided an issue which was not the subject matter of the writ petitions, particularly when neither party had raised it or canvassed it?

(iii) Whether the Government was justified in issuing clarificatory order dated 25.6.1999 that the left over period of five years should be reckoned from the date of issue of order of retirement on medical invalidation, is

unreasonable and arbitrary?

9. *The principles relating to compassionate appointments may be summarized thus :*

(a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are well recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well recognized contingencies which are carved out as exceptions to the general rule are :

(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the bread-winner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the bread winner.

Another contingency, though less recognized, is where land holders lose their entire land for a public project,

the scheme provides for compassionate appointment to members of the families of project affected persons. (Particularly where the law under which the acquisition is made does provide for market value and solatium, as compensation).

(c) Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.

(d) Compassionate appointments are permissible only in the case of a dependant member of family of the employee concerned, that is spouse, son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is, class III and IV posts and the crises cannot be permitted to be converted into a boon by seeking employment in Class I or II posts.

16. There are of course safeguards to be taken to ensure the scheme is not misused. One is to ensure that mere medical unfitness to continue in a post is not treated as medical invalidation for purposes of compassionate appointment. A government servant should totally cease to be employable and become a burden on his family, to

warrant compassionate appointment to a member of his family. Another is barring compassionate appointments to dependants of an employee who seeks voluntary retirement on medical grounds on the verge of superannuation. This Court observed in Ram Kesh Yadav (supra) as follows :

"But for such a condition, there will be a tendency on the part of employees nearing the age of superannuation to take advantage of the scheme and seek voluntary retirement at the fag end of their service on medical grounds and thereby virtually creating employment by "succession". It is not permissible for the court to relax the said condition relating to age of the employee. Whenever a cut-off date or age is prescribed, it is bound to cause hardship in marginal cases, but that is no ground to hold the provision as directory and not mandatory."

We find that in this case stringent safeguards were in fact built into the scheme on both counts by GMs dated 4.7.1985 and 9.6.1998."

10. I have considered the submissions of the learned Counsels and have gone through the judgment cited by Mr. Patil.

11. It is not in dispute that the parents of the petitioners are alive and had sought voluntary retirement on medical ground. It is also not in dispute that the Government Resolution dated 22.08.2005 is made applicable. It is also not in dispute that the Municipal Council had not taken the prior approval of the District Collector while issuing the appointment orders to the petitioners. It is equally undisputed that the petitioners were not heard and retrenchment compensation for having put in one year of service was also not paid.

12. It is trite law that compassionate appointments are governed by certain schemes. It is not a matter of right to be appointed on compassionate basis.

13. The learned Apex Court in the matter of ***Canara Bank and Another Vs. M. Maheshkumar, 2016 (1) MLJ 594*** (February issue) has dealt with the law on compassionate appointment. It would be apposite to reproduce paragraph nos.7, 9, 11, 12, 16 and 17 of the said judgment which read as under:-

7) Law with regard to employment on compassionate ground for dependant of a deceased employee is well settled. In Sushma Gosain & Ors. vs. Union of India & Ors., (1989) 4 SCC 468, this Court held as thus:

“9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.” The settled law which has been reiterated in various cases has been succinctly elucidated in MGB Gramin Bank vs. Chakrawarti Singh, (2014) 13 SCC 583, wherein it was observed that compassionate appointment cannot be granted as of right and the application to be decided as expeditiously as possible and held as under:-

“6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out

in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.”

9) *Before advertng to the arguments of the learned counsel for the parties, it is necessary to examine the scope of the Scheme dated 8.05.1993 vide Circular No.154/1993 for “compassionate appointment”. The object of the Scheme is to help dependants of employees of Canara Bank who die or become totally and permanently disabled while in harness*

and to overcome the immediate financial difficulties on account of sudden stoppage of the main source of income. The employment under the scheme will be considered only if there are indigent circumstances necessitating employment to one of the dependants and the deceased employee's service record is unblemished. Mere eligibility will not vest a right for claiming employment. As per para 3.1, application for employment should be sought within 2½ years from the date of death of the employees. In para 3.2, it is stated that in case of the dependant of the deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority provided a request is made to the bank by the family of the deceased employee and the same may be considered subject to rules prevailing at the time of consideration.

11) *The main question falling for consideration is whether the Scheme passed in 2005 providing for ex-gratia payment or the Scheme then in vogue in 1993 providing for compassionate appointment is applicable to the respondent. Appellant-bank has placed reliance upon the judgment of this Court in Jaspal Kaur's case (supra) to contend that the respondent's case cannot be considered on the basis of 'Dying in Harness Scheme 1993' when the new Scheme of 2005 providing for ex-gratia payment had been put in place. In*

Jaspal Kaur's case (supra), Sukhbir Inder Singh employee of State Bank of India, Record Assistant (Cash & Accounts) passed away on 1.08.1999. Widow of the employee applied for compassionate appointment in State Bank of India on 5.02.2000. On 7.01.2002, the competent authority of the bank rejected the application of Jaspal Kaur in view of the Scheme vis- a-vis the financial position of the family. Against that decision of the competent authority, the respondent filed writ petition before the Punjab and Haryana High Court which has directed to consider the case of Jaspal Kaur by applying the Scheme formulated on 4.08.2005 when her application was made in the year 2000. In that factual matrix, this Court has directed that dispute arising in the year 2000 cannot be decided on the basis of a Scheme that was put in place much after the dispute. By perusal of the judgment in Jaspal Kaur's case, it is apparent that the judgment specifically states that claim of compassionate appointment under a scheme of a particular year cannot be decided in the light of the subsequent scheme that came into force much after the claim.

12) The same principle was reiterated by this Court in the case of [Bhawani Prasad Sonkar vs. Union of India & Ors.](#), (2011) 4 SCC 209, wherein it was held as under :-

“15. Now, it is well settled that compassionate employment

is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

17. [In Umesh Kumar Nagpal v. State of Haryana](#), (1994) 4 SCC 138, while emphasising that a compassionate appointment cannot be claimed as a matter of course or in posts above Classes III and IV, this Court had observed that: (SCC p. 140, para 2) "2. ...The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a

member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the [pic]rule made in favour of the family of the deceased employee is in consideration of the

services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) *Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.”*

16) *In Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors.*, (2000) 6 SCC 493, while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in paragraph (13), this Court held as under:-

“13.But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family — this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate

appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation.” Referring to Steel Authority of India Ltd.’s case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents’ family is having any other income to negate their claim for appointment on compassionate ground.

17) *Considering the scope of the Scheme ‘Dying in Harness Scheme 1993’ then in force and the facts and circumstances of the case, the High Court rightly directed the appellant-bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence. We do not find any reason warranting interference.”*

14. It is thus settled by the consistent view taken by the Courts that compassionate appointment cannot be claimed as a

matter of right. The Court cannot travel beyond the provisions applicable by resorting to a liberal interpretation of the rules beyond permissible limits or on humanitarian grounds only to accommodate the claim of a candidate.

15. In the instant case, by clause 2(1) of the Government Resolution dated 22.08.2005, it has been revised by way of a policy that even if an employee in the Class C or D category suffers from Cancer or Paralysis or is temporarily disabled on account of an accident, his legal heir would not be entitled for compassionate appointment. The legal heir of a candidate working in the Class C or D category who has passed away while in service, alone can put forth a claim for compassionate appointment. By clause 2(2), the age limit of 40 years has been prescribed for such candidates and by clause 2(3), the period in which an application can be filed after the demise of the parent has been reduced from five years to one year. There is no dispute that the petitioners have, as on date, not challenged the Government Resolution dated 22.08.2005.

16. In the matter of V. Sivamurthy (supra) decided by the Hon'ble Supreme Court, the Government Order issued by the State of Andhra Pradesh was called in question. The said Government Order dated 09.06.1998 was dealt with and the learned Apex Court while deciding the said case has recorded its observations. In the said case, the right of a candidate whose father has been disabled or retired due to medical invalidation, has been considered.

17. In the instate case, the Government Resolution dated 22.08.2005 has revised the conditions and the same have not been challenged by the petitioners. As such, the view taken by the Hon'ble Supreme Court in the case of V. Sivamurthy (supra), may not be of any assistance to the petitioners.

18. In the light of the above, I do not find that the impugned judgment delivered by the Industrial Court could be termed as being perverse or erroneous. These petitions being devoid of merits, are therefore dismissed. Rule is discharged.

19. Nevertheless, the retrenchment compensation payable to the petitioners u/s 25(F) of the Industrial Disputes Act, shall be paid by Respondent No.1-Municipal Council within 12 weeks from today.

(RAVINDRA V. GHUGE, J.)