

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 6400 OF 2014**

VISHAKHA MADHUKAR WAGH (PATIL)
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Mr. Gore R. V.
AGP for Respondent/State : Mr. V.S. Badakh
Advocate for Respondent no.2 : Mr. Rajendra
N. Chavan h/f Mr. Sharma Vijay

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CORAM : S.S. SHINDE & SANGITRAO S. PATIL, JJ.
Dated: JULY 1, 2016

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PER COURT :-

This Petition is filed, being aggrieved by the impugned communication/order dated 9th May, 2014 issued by Respondent No.2 - Chief Executive Officer, Zilla Parishad, Jalgaon. The petitioner also seeks further direction to the Respondents to appoint the petitioner on compassionate ground, in the light of her application dated 15th June, 2013.

2. The learned counsel appearing for the petitioner submits that the petitioner's father died in road accident on 6th June, 1996. The petitioner's mother filed application to give appointment on compassionate ground to the sister of the petitioner. The said application was kept pending by the Respondents inspite of repeated requests made to them to give employment to the sister of the petitioner on compassionate ground. It is further the argument of the learned counsel appearing for the petitioner that thereafter sister of the petitioner also filed application on 31st March, 2005 seeking appointment on compassionate ground, however, Respondent No.2 by its letter dated 25th April, 2005, addressed to the sister of the petitioner, informed that in view of the provisions in the Government Resolution dated 11th September, 1996, she has not completed 18 years age, and therefore, the application should be filed within one year from completing 18 years age. Thereafter, the petitioner filed application on 15th June, 2013, however, the concerned Respondent has rejected the same by taking hyper technical view that the said application was not made

within time. The learned counsel appearing for the petitioner in support of his contention that the application filed by the petitioner for appointment on compassionate ground should not have been rejected on technical ground, placed reliance on the judgment of the Supreme Court in the case of **Canara Bank and another V/s M.Mahesh Kumar**¹ and the judgment of the Division Bench of Bombay High Court in the case of **Ritesh Vilasrao Gotmare V/s State of Maharashtra and anr.**². The learned counsel further submits that the application, which was filed by the mother of the petitioner was when alive and in continuation the petitioner filed the subsequent application, and therefore, in all fairness, the Respondent Authorities ought to have considered the application of the petitioner on its own merits instead of rejecting the same holding that the petitioner did not file the application within time, and the application filed by the mother on behalf of the petitioner was not competent to be considered on merits.

3. On the other hand, the learned counsel appearing for the Respondent - Zilla

1 2015 AIR (SC) 2411

2 2014(2) All M.R. 193

Parishad, relying upon the averments in the reply, submits that admittedly the petitioner on completion of 18 years age did not file the application within one year and therefore, the same was rightly rejected by the Respondent - Zilla Parishad. He invites our attention to para 12 of the judgment of the Supreme Court in case of **Canara Bank (supra)** and submits that the Petition is devoid of any merits and the same may kindly be rejected.

4. We have carefully considered the submissions advanced by the learned counsel appearing for the petitioner, the learned A.G.P. appearing for the Respondent/State and the learned counsel appearing for the Respondent -Zilla Parishad. With their able assistance, we have perused the pleadings/grounds taken in the Petition, annexures thereto and the relevant Government Resolutions/circulars, which are placed on record by the petitioner. The contention of the counsel appearing for the petitioner is that the application filed by the mother of the petitioner could have been considered as the application on behalf of the petitioner. Even on attaining the age of 18 years, the

petitioner has to be considered for appointment on compassionate ground, in the light of the Government Resolution dated 11th September, 1996 issued by the General Administration Department, Government of Maharashtra (Exhibit 'H' page 21 of the Petition), wherein the scheme provides for filing the application by the heirs and legal representatives of the deceased, who is major. Therefore, there is no substance in the contention of the learned counsel appearing for the petitioner that it is not necessary to file the application by the candidate desirous to have appointment on compassionate ground. Admittedly, the petitioner became major on 31st May, 2010, however, she herself filed the application in the year 2013 i.e. beyond the period of one year on attaining the age of 18 years. The Supreme Court in the case of **Canara Bank (supra)** in para 12 held thus :-

"12.

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 employees family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependents 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.

5. Therefore, keeping in view the discussion in the foregoing paragraphs and the judgment of the Supreme Court in the case of **Canara Bank (supra)**, and in particular, the aforementioned factors laid down by the Supreme Court, it is not possible to accept the contention of the petitioner that the petitioner's application was within time and the same should have been considered on its merits. The reliance placed by the learned counsel appearing for the petitioner in case of **Ritesh (supra)** is misplaced in the facts of the present case, in as much as, in the facts of that case, the grand father of the petitioner therein filed application for appointment on compassionate ground on behalf of the petitioner, when the petitioner was a minor. However, after becoming the major, the petitioner therein filed application/representation to the Commissioner of Police within time. As already observed in the facts of the present case, the petitioner after becoming the major did not file the application within stipulated period, as provided under the scheme.

6. For the reasons aforesaid, we are unable to persuade ourself to grant any

relief to the petitioner. Hence the Petition stands rejected.

(SANGITRAO S. PATIL, J.) (S.S. SHINDE, J.)

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