

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

WRIT PETITION NO. 207 OF 2016

DISTRICT: AURANGABAD

Mr. Pawan s/o. Dinkar Palaskar,
Age 33 Years, Occu. Student,
R/o. A-11/9, Shivajinagar, Garkheda
Main Road, CIDCO, District Aurangabad **PETITIONER**

VERSUS

- 1] The State of Maharashtra
Through the Secretary,
Conservator of Forest Department
Mantralaya, Mumbai – 32.
- 2] The Deputy Conservator
of Forest, Station Road,
Aurangabad

[Two copies of respondent
No.1 and 2 to be served on Govt.
Pleader, High Court of Bombay,
Bench at Aurangabad]

RESPONDENTS

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Mr. A.S.Deshmukh, Advocate for the Petitioner
Mr. P.G.Borale, AGP for Respondent Nos.1 and 2

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

**Reserved on : 07.01.2016
Pronounced on: 25.01.2016**

JUDGMENT: [Per S.S.Shinde, J.]

- 1] This Petition takes exception to the Judgment
and Order dated 12th December, 2014, passed by the

Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad in Original Application No.693/2012, and also seeks directions to the respondent No.2 to consider the claim of the petitioner for appointment on compassionate ground.

2] The learned counsel appearing for the petitioner submits that, the father of the petitioner died, during the course of employment of the respondent No.2, on 24th March, 1995. He invited our attention to the provisions of the Government Resolution dated 8th March, 1985, and submits that, the legal heirs of the deceased, who are willing to apply on compassionate ground, can apply within 5 years from death for appointment on compassionate ground. He further invited our attention to the provisions of the Government Resolution dated 11th September, 1996, and submits that, if the legal heirs of the deceased employee are minor at the time of death of Government employee, in view of the provisions of the said Government Resolution, said minors, after attaining the age of majority, can apply within one year for the appointment on compassionate ground. It is submitted that, the deceased Dinkar has left behind him his legally

wedded wife namely Chandrakalabai, minor son – petitioner and one minor daughter. Smt. Chandrakalabai widow of Dinkar Palaskar [deceased], within one month from his death, filed the application with the respondent No.2 for appointment on compassionate ground. It is submitted that, one Smt. Ushabai, claiming to be the legally wedded wife of deceased Dinkar, filed MARJI No.154/1995, in the Court of Civil Judge Junior Division, Aurangabad, for grant of succession certificate under Section 372 of the Indian Succession Act. Said Ushabai had two sons and one daughter. Eventually, the daughter died in an accident and both the sons were minor at the time of filing of proceedings under the Successions Act. The concerned Court allowed the application of Smt. Ushabai, and succession certificate was issued in her favour on 19th July, 1995, and accordingly, she also filed an application for appointment on compassionate ground.

3] Being aggrieved by the decision in MARJI No. 154/1995, Smt. Chandrakalabai filed MARJI No.256/1995 under Section 383 of the Indian Succession Act. In the said proceedings, the Court revoked the succession certificate granted in favour of Ushabai. Said Smt. Ushabai feeling

aggrieved and dissatisfied by the decision, revoking her succession certificate, preferred Regular Civil Appeal No. 311/2000, challenging the revocation of succession certificate granted in her favour. However, said Appeal came to be dismissed. Being aggrieved by the said Judgment and Decree, Smt. Ushabai filed Civil Revision Application No.238/2004 before the High Court. The High Court, on 20th June, 2005, rejected said Civil Revision Application. However, while rejecting the said Civil Revision Application, parties were given liberty to take an appropriate remedy for redressal of their grievance.

4] It is further submitted that, prior to the decision of the High Court in the said Civil Revision Application, Smt. Chandrakalabai informed by letter dated 8th July, 2001, by the respondent No.2 that, unless Civil Revision Application is finally decided by the High Court, her case for appointment on compassionate ground cannot be considered. It is further submitted that, on 24th July, 2007, the parties have amicably settled the dispute between the parties, and accordingly, compromise deed was prepared between Ushabai and Chandrakalabai with the respective sons and daughters and the same was verified before the

Civil Judge Junior Division, Aurangabad, accepting compromise, and accordingly, the proceedings were disposed off.

5] It is the submission of the learned counsel appearing for the petitioner that, in view of the said compromise, all monetary benefits were to be given to Ushabai and her legal heirs and as far as appointment on compassionate ground is concerned, in the said compromise deed, it was agreed that, none of the legal heirs of the family members of Dinkar Palaskar are in Government service, and since the petitioner is elder son of Dinkar Palaskar, it was agreed that, he should apply with the respondent No.2 for the employment on compassionate ground and none of the parties should create any problems for him.

It is submitted that, in due course of proceedings, Smt. Chandrakalabai had become age barred, and therefore, she could not proceed with her application on compassionate ground, and all other benefits such as group insurance, gratuity funds and GPF etc. as per the compromise deed were taken away by Ushabai and her legal heirs and nothing was given to Chandrakalabai and

his son i.e. present petitioner. It is submitted that, in pursuance to the compromise dated 24th July, 2007, the petitioner immediately filed an application on 23rd August, 2008, i.e. within a period of one year, after becoming major and after the legal proceedings, ended into the compromise, which were pending before the Competent Court. It is submitted that, the delay which caused, was only because of the pending proceedings before the Court. It is submitted that, the petitioner was anxiously waiting with the ray of hope that, one or the other day, he will get appointment on the compassionate ground. However, he did not receive response from the said respondent No.2, therefore, he filed an application on 1st March, 2011, renewing his request for appointment on compassionate ground. However, on 5th October, 2011, the applicant was communicated that, the application is time barred and beyond period of limitation and the same was rejected on the said ground. Being aggrieved by the same, the petitioner filed Original Application No.693/2012. However, same also came to be dismissed. It is submitted that, family of the petitioner is suffering from financial crunch since in the compromise between the parties, all monetary benefits were given to the said Ushabai, and therefore,

except as agreed by the parties in the compromise to apply for appointment on compassionate ground by the petitioner, no any other benefit was received by his family. Therefore, relying upon the pleadings in the Petition, grounds taken therein, annexure thereto, the learned counsel appearing for the petitioner submits that, the Petition may be allowed.

6] On the other hand, the learned AGP appearing for the respondent – State, relying upon the reasons recorded by the Maharashtra Administrative Tribunal and also the fact that, there was inordinate delay in filing application for appointment on compassionate ground, submits that, Petition may be rejected.

7] We have heard the learned counsel appearing for the petitioner, and the learned AGP appearing for the respondent – State. With their able assistance, perused the pleadings / grounds taken in the Petition, annexure thereto, relevant Government Resolution, other documents placed on record and unreported Judgment of the Division Bench of this Court in the case of *Pravin Babasaheb Shekade Vs. The State of Maharashtra* in Writ Petition No.8047/2011, decided on 17th January, 2012. We have carefully perused

the reasons assigned by the Maharashtra Administrative Tribunal [for brevity hereinafter referred as 'MAT']. The MAT has adverted to some undisputed facts, *firstly*, death of father of the petitioner was on 24th March, 1995, while working with the respondent No.2, Smt. Chandrakalabai [mother of petitioner] applied for the appointment on compassionate ground on 21st April, 1995. Another wife of deceased Dinkar Palaskar also filed the application for compassionate ground on 17th April, 1995. The respondent No.2 asked both wives to produce succession certificate on 28th April, 1995. The petitioner herein filed application for appointment on compassionate ground on 23rd August, 2007, as both the wives namely Ushabai and Chandrakalabai agreed in the compromise that, applicant can apply for appointment on compassionate ground in place of his father. The Government Resolution dated 26th October, 1994, provides for filing application for appointment on compassionate ground within 5 year of the death of Government servant. Applicant did not apply within 5 years. Even if, the case of the applicant is considered under another Government Resolution dated 11.09.1996 and 23rd August, 2005, the petitioner has not applied within time.

8] During the course of hearing the learned counsel appearing for the petitioner submitted that, petitioner filed an application for appointment on compassionate ground with the respondent No.2 within one year from attaining the age of 18 years. However, upon careful perusal of the averments in the Original Application, which was filed before the Maharashtra Administrative Tribunal, there are no averments to the effect that, on attaining age of majority, within one year petitioner filed an application for appointment on compassionate ground. Therefore, the Maharashtra Administrative Tribunal had no opportunity to consider the said aspect. Upon careful perusal of the title clause of the Original Application No. 693/2012, petitioner has mentioned his age as 21 Years. The said Original Application was filed in the Year 2012. When the Writ Petition is filed by the petitioner on 22.12.2015, in verification clause, the petitioner has mentioned his age as 21 Years. In the title clause of the Petition, the petitioner has mentioned his age as 33 years. No document is placed on record showing the correct date of birth of the petitioner. It is difficult to fathom that, the petitioner, who was 21 years of age, while filing the Original

Application in the Year 2012, is of the same age while filing Writ Petition on 22.12.2015. As already observed, title clause of the Petition shows the age of the petitioner as 33 years. In that view of the matter, we are of the *prima facie* opinion that, the petitioner has not approached this Court with clean hands disclosing all true facts, and therefore, he is not entitled for equitable relief or discretionary relief. It is basic and cardinal principle in law that, whoever approaches the court for discretionary and equitable reliefs, shall approach with clean hands, disclosing all true and relevant facts. Apart from it, upon careful perusal of the reasons assigned by the Maharashtra Administrative Tribunal, which are adverted herein before, we do not find any reason to interfere in the impugned Judgment, since the reasons assigned by the Tribunal are in consonance with the material produced on record. The fact that the petitioner and his family survived for more than 20 years from the death of the father of the petitioner, is the indication that, there is no acute financial difficulty being faced by the family of the petitioner.

9] The Hon'ble Supreme Court in the case of *Bhawani Prasad Sonkar v. Union of India and others*¹, while

1 [2011] 4 SCC 209

explaining the scheme of appointment on compassionate ground in para 15, held thus:

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.*

The Hon'ble Supreme Court while considering the delay in filing the application for appointment on compassionate ground in the case of *Shreejith L. Vs.*

*Deputy Director [Education] Kerala and others*² in the facts of that case observed that, the delay of more than 14 years fatal to prayer for compassionate appointment.

While explaining the purpose of appointments on the compassionate ground, the Hon'ble Supreme Court in the case of *Santosh Kumar Dubey vs. State of Uttar Pardesh and others*³ in para 11 and 12 held thus:

11. The very concept of giving a compassionate appointment is to tide over the financial difficulties that are faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints.

12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be

2 [2012] 7 SCC 248

3 [2009] 6 SCC 481

treated as a bonanza and also as a right to get an appointment in government service.

In the case of *State of Manipur vs. Md. Rajaodin*⁴, while considering the delay in filing the application for appointment on compassionate ground, the Supreme Court in para 9 to 13, held thus:

9. *Admittedly, the respondent's father died before the office memorandum came into operation. In the memorandum a time period is stipulated. Since the Scheme itself was not in operation when the respondent's father died, the time stipulation as provided in the Scheme would not be strictly applicable to the case of the respondent and anyone seeking for relief thereunder has to at least move within the time stipulated commencing from the date of the order. Nevertheless, keeping in view at any rate the object for which such appointments which are also compassionate appointments are made, the minimum requirement is that the request for appointment should be made as expeditiously as the circumstances warrant. It could not be brought to our notice whether there was any scheme in operation prior to the Scheme of 1984 referred to above. As the appointments of such nature envisaged under the said Scheme are made to tide over immediate difficulties, there is an inbuilt requirement of urgency in making the application.*

4 [2003] 7 SCC 511

Though it was contended that the respondent was a minor at the time of his father's death, it is to be noted that he was 10 years of age in 1980 when his father died. Even if a reasonable period after he attained majority is taken, certainly the application on 25-7-1997 seeking appointment was highly belated.

10. *As was observed in State of Haryana v. Rani Devi⁵, it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of a sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-Harness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In Rani Devi case it was held that the Scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional*

5 [1996] 5 SCC 308

grounds. In *LIC of India v. Asha Ramchandra Ambekar*⁶ it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments. It was noted in *Umesh Kumar Nagpal v. State of Haryana*⁷ that as a rule public service appointments should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of an employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

11. In *Sushma Gosain v. Union of India*⁸ it was observed that in all claims of 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 breadwinner in the family. Such appointments

6 [1994] 2 SCC 718

7 [1994] 4 SCC 138

8 [1989] 4 SCC 468

should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in Phoolwati v. Union of India⁹ and Union of India v. Bhagwan Singh¹⁰. In Director of Education (Secondary) v. Pushpendra Kumar¹¹ it was observed that in the matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for grant of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking

9 1991 Supp (2) SCC 689

10 [1995] 6 SCC 476

11 [1998] 5 SCC 192

away completely the right conferred by the main provision.

12. *In State of U.P. v. Paras Nath¹² it was held that the purpose of providing employment to the dependant of a government servant dying in harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointments. None of these considerations can operate when the application is made after a long period of time. In that case also the delay was of 17 years.*

13. *When the case of the respondent is considered in the panorama of the aforesaid legal principles, the inevitable conclusion is that he was not entitled to appointment. Even after the 1984 Scheme came into force, the application was filed after a long lapse of time. He, therefore, had no right much less a legal right to ask for an appointment. The learned Single Judge of the High Court was not justified in directing the appellant to give appointment. It is also on record that there was a ban on direct recruitment under the Die-in-Harness Scheme as is evidenced by the office memorandum dated 24-7-2001. The Scheme itself provided for a clearance from the Government in*

12 [1998] 2 SCC 412

the Department of Personnel and Administrative Reforms (Personnel Division).

Yet in another Judgment in the case of *Director General of Posts and others Vs. K. Chandrashekhar Rao*¹³ while explaining the scope of judicial review while considering the policy decision / policy matter for the appointment of compassionate ground, it is held that, the acts of framing such policy matter fall in the domain of the State and do not call for any judicial interference. The Courts have to only ensure that, State has to abide by the Scheme it has floated for compassionate appointment.

In the case of *State of Gujarat and others v. Arvindkumar T. Tiwari and another*¹⁴, the Hon'ble Supreme Court in para 8 held thus:

8. *It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. A claim to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial*

13 [2013] 3 SCC 310

14 [2012] 9 SCC 545

condition of the family of the deceased. Such a category of employment itself, is an exception to the constitutional provisions contained in Articles 14 and 16, which provide that there can be no discrimination in public employment. The object of compassionate employment is to enable the family of the deceased to overcome the sudden financial crisis it finds itself facing, and not to confer any status upon it. (Vide Union of India v. Shashank Goswami¹⁵)

10] Keeping in view discussion in the foregoing paragraphs and expositions of the Hon'ble Supreme Court of which reference is made hereinbefore, in our considered view, the petitioner is not entitled for any relief, hence, Petition stands rejected.

[P.R.BORA, J.]

[S.S. SHINDE, J.]

DDC

15 [2012] 11 SCC 307