

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 3282 OF 2002

Greater Mumbai Milk Scheme
A.G.Khan Road, Worli Sea Face
Mumbai – 400 065.

.. Petitioner

Vs.

Shri Dudhaji Mahadeo Kamble
Unit No.22, Aarey Milk Colony,
Goregaon (East), Mumbai-400 065.

.. Respondent

Ms.M.S.Bane, 'B' Panel – Assistant Government Pleader, for the
Petitioner.

***CORAM: N.M. JAMDAR, J.
Wednesday, 17 February 2016.***

Oral Judgment :

By this petition the Greater Mumbai Milk Scheme an instrumentality of the State, challenges the order passed by the Industrial Court, Mumbai dated 27 September 2001 wherein the Industrial Court has directed the Petitioner to consider the Application of the son of the Respondent dated 12 July 1996 for appointment on compassionate basis.

2. The Respondent was employed in Class 'D' service. His birth-date was 1 January 1938. He was prematurely retired on the ground of being medically unfit on 20 May 1996. He made an application on 12 July 1996 for appointment of his son on

compassionate basis, which application was rejected on 20 February 1997. Aggrieved by this rejection of his application, the Respondent filed a Complaint (ULP) No.1274 of 1998 in the Industrial Court, Mumbai under Items 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. It was his contention that the Petitioner had not given effect to the Government Resolutions in respect of appointments on compassionate basis, which amounted to unfair labour practice on the part of the Petitioner. The Complaint was resisted by the Petitioner on the ground that the Respondent was not entitled as per the policy and the Resolution dated 23 August 1996 could not be read retrospectively. The Industrial Court held that the son of the Respondent was entitled to be considered on compassionate basis as per the Resolution dated 26 October 1994 and allowed the Complaint by the impugned order.

3. Rule was issued in this petition on 18 June 2002. Initially, ad-interim relief was granted. Thereafter the ad-interim relief was confirmed, since inspite of service Respondent had not appeared, which interim relief is continuing since then.

4. Firstly, it has to be kept in mind that appointments on compassionate basis are not another source of recruitment and the claim has to be strictly considered as per the parameters of relevant rules and regulations. The object of appointments on compassionate basis is to help the family of the employee who is deceased or declared medically unfit, to tide over sudden crisis.

Therefore, whenever this relief is to be granted the Court cannot be unmindful of time and the financial condition of the dependents. The Industrial Court has not looked into any of these aspects. Furthermore, it is contended that the Resolution dated 23 August 1996 stipulated that for the employees in category 'D' to be qualified for consideration on compassionate appointment of their dependents they must have completed 57 years of age at the relevant time. The Resolution dated 23 August 1996 which is placed on record contains such a stipulation. When the Industrial Court passed the impugned order, this policy was in force.

5. The Respondent retired 30 years back. He was born in the year 1938. Consequently his son will also be now of advanced age. Neither Respondent or anybody on his behalf has filed any affidavit placing on record the current financial position of the son, or that he is interested in the employment. None has appeared when the matter is called out.

6. Considering these factors, the order passed by the Industrial Court cannot be allowed to stand. Accordingly, the impugned order dated 27 September 2001 is quashed and set aside. Rule is made absolute in above terms. No order as to costs.

(N.M.Jamdar, J.)