

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

25 WRIT PETITION NO. 1384 OF 2016

THE STATE OF MAHARASHTRA AND OTHERS
VERSUS
MOHD ZAKIYODDIN MOHD ANISODDIN

Smt. A.V. Gondhalekar, Additional Government
Pleader, for the petitioners.

Smt. A.N. Ansari, Advocate, for respondent.

**Coram: T.V. NALAWADE &
SANGITRAO S. PATIL, JJ.**

Date: 27 February 2017

ORDER:

1) The petition is filed to challenge the decision of the Maharashtra Administrative Tribunal dated 24-3-2015 given in Original Application No.465/2012. Both the sides are heard.

2) The aforesaid proceeding was filed before the Tribunal to challenge the communications of the present petitioners dated 3-1-2011 and 18-1-2011. By these communications

it was informed to respondent, Shri. Mohd. Zakiyoddin that he cannot be taken on wait-list in place of his sister for giving him appointment on compassionate ground. The Tribunal has set aside this decision of the petitioners by holding that as the respondent is a son of the deceased and as there are still other dependents of the deceased, appointment can be given to son, Shri. Mohd. Zakiyoddin.

3) The learned Additional Government Pleader took this Court through various Government Resolutions which are of the years 1994, 1997 and 2015. The learned Additional Government Pleader submitted that first time in the year 2015, by Government Resolution dated 20-5-2015, the Government permitted to bring on record other dependent of the deceased when in the past one dependent was taken on wait-list for giving appointment on compassionate ground. She submitted that the condition is that the said candidate on wait-list is dead. Learned

Additional Government Pleader submitted that in the present matter a daughter of the deceased was taken on wait-list in the year 1995 when the employee died on 25-2-1994 and she was there till the year 2006.

4) The learned Additional Government Pleader submitted that the sister of Mohd. Zakiyoddin was to get married and so such change application was made by him. She submitted that, in view of the policy of the Government, such change cannot be allowed. The learned AGP has placed reliance on the cases reported as **AIR 2012 SC 2294 (Union of India v. Shashank Goswami)**; and, **AIR 2013 SC 3365 (MGB Gramin Bank v. Chakrawarti Singh)**. The relevant observations are at para 9 of the first case and at paragraphs 5 and 6 of the second case and they are as follows :

"9. There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant

was dependent on the deceased employee. Strictly, such a 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 sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment 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 the 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 and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/group of post. 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."

"5. Every appointment to public office must be made 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 bread-earner. 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. Moreso, 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.

6. In Umesh Kumar Nagpal v State of Haryana and Ors., (1994) 4 SCC 138 : (1994 AIR SCW 2305), this Court has considered the nature of the right which a dependent can claim while seeking employment on compassionate ground. The Court observed as under :-

"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. ... The exception to the 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. ... the only ground which can justify compassionate employment is the penurious condition of the deceased's family. The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis."

5) There cannot be dispute over the propositions of the Hon'ble Apex Court made in the cases cited supra. In the present matter State Government has specific policy to give appointment on compassionate ground to a dependent of the deceased employee. The policy cannot be that rigid that it makes impossible to implement of the policy. On this point learned counsel for the respondent Mohd. placed reliance on the observations made by this Court in **Writ Petition No.5073/2007** at this Bench (The State of Maharashtra & Others v. Smt. Anjali Vijay Naikwade & Another). Even when there was no Government Resolution to allow to change the candidate this Court had held that such substitute is possible if there is a policy to

give appointment on compassionate ground. This Court also held that there cannot be such restrictions which are coming in the way of the implementation of such policy. In view of the aforesaid policy of the Government, this Court holds that the Tribunal has not committed any error in setting aside the decision informed to the respondent Shri. Mohd. Zakiyoddin in the aforesaid communication. It is not possible for this Court to interfere in the decision of the Tribunal. In the result, the petition stands dismissed.

Sd/-
(SANGITRAO S. PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)

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