

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8367 OF 2016

- 1) Hirabai Devidas Patil,
Age 41 years, Occupation Nil,
R/o Plot No.7, Bhaskar Nagar,
Dondaicha Taluka Shindkheda
District Dhule.
- 2) Rakesh Devidas Patil,
Age 20 years, Occupation Nil,
R/o Plot No.7, Bhaskar Naga,r
Dondaicha, Taluka Shindkheda,
District Dhule.

...Petitioner

Versus

- 1) The State of Maharashtra,
Through Secretary,
General Administration Department,
Mantralaya, Mumbai.
- 2) The Secretary,
Rural Development and Water
Conservation Department,
Mantralaya, Mumbai.
- 3) The Chief Executive Officer,
Zilla Parishad, Dhule.
Taluka and District Dhule.
- 4) The Block Development Officer,
Panchayat Samiti, Sakri,
Taluka Sakri, District Dhule.

...Respondents

Mr. A. S. Sawant, Advocate for petitioners.
Mr. S. B. Joshi, AGP for respondents No.1 and 2/ State.
Mr. N. N. Desale, Advocate for respondent No.3.

**CORAM : R. M. BORDE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 13-12-2017

PER COURT :

1. The petitioner is objecting the clause 1 (c) of the Government Resolution dated 20th May, 2015 which prohibits substitution the name of legal heir/ family member of the deceased recorded in waiting list for the purpose of providing employment on compassionate ground.

2. The husband of the petitioner passed away on 15-02-2007 while in employment and as such considering the application tendered by the petitioner, her name was enlisted in the list maintained by the respondent Zilla Parishad, Dhule for employment on compassionate ground. The petitioner however on 31-08-2010 tendered application to the Chief Executive Officer requesting him to strike down her name and instead record name of her son who is taking education in 9th Standard and to take him in employment after completion of 18 years

age. It is specifically recorded in the application by the petitioner that, due to ill health she does not want to accept the employment and as such the employment be offered to her son. Since there is no such provision for making substitution of the name of the legal heir, the application was not considered.

3. The rule prima facie does not appears to be arbitrary or irrational. The object of providing employment to the family member of the deceased on the ground of compassion is for facilitating the family to tide over the immediate financial crisis. The employment on compassionate ground is an exception to the general rule of providing employment strictly in accordance with the recruitment process and the object of providing such employment to a family member of the deceased is to facilitate such family to overcome sudden crises occurred as a result of the demise of the bread earner.

4. In the case of *Jagdish Prasad vs. State of Bihar, (1996) 1 SCC 301*, it was observed that,

"The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family."

Further in **MMTC Ltd. vs. Pramoda Dei, (1997) 11 SCC 390**, it is observed by the Apex court that,

"As pointed out by this Court, the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment and that mere death of an employee does not entitle his family to compassionate appointment."

In the case of **S. Mohan vs. Government of T.N., (1998) 9 SCC 485**, it has been observed that,

"The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

5. In **Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138** it has been held that,

"The compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

Further in the case of ***Punjab National Bank vs. Ashwini Kumar Taneja, (2004) 7 SCC 265***, it was observed by the court that,

"It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis."

6. The appointment on compassion cannot be considered as a source of recruitment and also cannot be treated as bonanza or right to get an employment under the Government scheme. In the instant matter, the day on which an application was tendered by the petitioner, her son was minor and was yet to attain age of majority. He attained age of majority only after lapse of 7 years and 6 months after the demise of his father.

7. In any case the request made by the petitioner for substitution of the name of her son in her place cannot be considered after lapse of more than 7 years, which would not subserve the basic objective of the scheme. For the reasons recorded above, no interference is called for in exercise of extra ordinary jurisdiction of

this court, under Article 226 of Constitution of India.

8. The writ petition is rejected.

[SMT. VIBHA KANKANWADI]
JUDGE

[R. M. BORDE]
JUDGE

vjg/-.