

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13275 OF 2017

Smt. Supriya Suresh Patil @
Sow. Supriya Pratik Kadam,
Age 25 years, Occupation nil,
R/o Mogra, H-8, Tirupati Park,
Gurusahani Nagar, N-4, CIDCO,
Aurangabad.

.. Petitioner

VS.

- 1) The State of Maharashtra,
Through the Principal Secretary,
Rural Development & Water
Conservation Department,
Bandhkam Bhavan, 25, Marzban
Road, Fort, Mumbai 400 001.
- 2) The Divisional Commissioner,
Aurangabad Revenue Division,
Development Establishment Branch,
Aurangabad.
- 3) The Zilla Parishad, Parbhani,
Through its Chief Executive
Officer.

.. Respondents

Mr. A. S. Deshpande, Advocate, for the petitioner.
Mr. A. R. Kale, Assistant Government Pleader, for
respondents/ State.

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

DATE : 14-11-2017

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi. J.)

1. Taken up for final hearing at the admission stage with consent of both the parties.

2. Question about appointment on compassionate ground after lapse of considerable time has been answered in many pronouncements of the Hon'ble Supreme Court. In the present petition again the same question has been posed. The Petitioner has prayed for writ in the form of directions to respondent No. 3 to appoint her on compassionate ground.

3. Petitioner's father Suresh Keshavrao Patil was working as assistant teacher on the establishment of respondent No. 3. Suresh Patil expired on 22-06-2007, when he was posted at Gangakhed, Dist. Parbhani. Petitioner was minor at that time. Her mother submitted application on 21-08-2007 for appointing her on compassionate ground in place of her husband. Another application was submitted on 28-05-2008. Her mother had also stated that if it is not possible to give her appointment, then claim of her daughter – petitioner should be considered after the attainment of 18 years. Petitioner attained the age of 18 years on 26-05-2010 and immediately she made application

on 08-06-2010 for appointing her on compassionate ground in place of her father. In view of Government Resolution dated 17-11-2016, a married daughter is also eligible to get appointment on compassionate ground, only undertaking is required to be given. Respondent No. 3 had asked petitioner to submit her original documents in order to process her claim. Petitioner submitted her documents accordingly on 31-05-2013. Respondent No. 3 had forwarded a proposal to respondent No. 1 on 15-10-2016; however there is no positive response. Hence, this petition has been filed by invoking the writ jurisdiction of this Court under Art. 226 of Constitution of India.

4. It has been submitted by the learned Advocate appearing for petitioner that mother of the petitioner had made application within the limitation as prescribed in Government Resolution. She had also nominated petitioner in her place, if her own application was not worth consideration. Petitioner had also exercised option immediately after she became major. Respondents ought to have considered the request of the petitioner.

5. Per contra, it has been submitted on behalf of respondents that petition suffers from delay and latches.

6. It is not in dispute that father of the petitioner was serving

as Assistant teacher on the establishment of respondent No. 3 and he died, when he was still in service. It is also further not in dispute that petitioner was minor at that time. There is policy of the Government to give appointment to the heir of deceased employee, who dies when in service. There are certain conditions on which such appointments are made. The said policy has undergone changes at various times. Many terms and conditions are added or subtracted. However, the main intention behind providing such appointment is to give financial stability to the family of such employee. Earlier the benefit was given to a son only, but later on the benefit is extended to a married daughter also. Petitioner herein is the married daughter of the deceased employee. However, it is required to be seen whether she is entitled to get appointment on compassionate ground. Any person, who is a legal heir of deceased government employee is not entitled to get appointment on compassionate ground as of right. Such appointments are also subject to the judicial pronouncements on the subject.

7. 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."

Here in this case, Petitioner's father expired on 22-06-2007. His widow Smt. Surekha Suresh Patil had made an application for getting an appointment on compassionate ground on 21-08-2007. The said application was submitted within the period prescribed as per Government Resolution. Her name was taken in the waiting list

prepared by respondent No. 3. However, she communicated on 28-05-2008 that if it is not possible to give appointment to her, then name of her daughter be considered. In the mean time, since she had completed 40 years of age, her name was removed from the wait list. Thereafter, petitioner gave application for appointment on 08-03-2010, when she became major. Respondent No. 2 forwarded the proposal about her appointment on 7-11-2016, though by communication dt. 15-10-2016, respondent No. 3 with a negative note forwarded the proposal. The said proposal is pending, but petitioner has therefore, approached this Court in 2017. That means even after 10 years of death of the employee, the heirs have not got any appointment. It is not because of in-action on the part of respondents for long time. The family has survived and the immediate financial crises have been overcome.

8. 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."

9. Thus, the pronouncements indicated above would give a clear indication that the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed as of right and it can not be offered after a lapse of long time. Now after such a long time, petitioner can not be given appointment on compassionate ground so as to give go bye to the regular recruitment process, when the intention of the compassionate appointment no longer survives.

10. Taking into consideration above-said reasons, there is no merit in the petition. This is not a fit case, where we should exercise

our extra-ordinary jurisdiction under Art. 226 of Constitution of India.

Hence, petition stands dismissed with no order as to costs.

[SMT. VIBHA KANKANWADI]
JUDGE

[R. M. BORDE]
JUDGE

vjg/-.