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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2661 OF 2016

Afroz Khan Karimkhan

..Petitioner

Vs.

The state of Maharashtra & Anr.

..Respondents.

MS. Neeta Karnik for petitioner.

Mr. C.P. Yadav, AGP for State.

**CORAM: R.M. BORDE AND
A.S. GADKARI, JJ.**

DATE: 20 JANUARY 2017.

P.C.:

Heard.

2] The petitioner is objecting to the Order dated 6 October 2015 passed by the Maharashtra Administrative Tribunal, Mumbai rejecting the Original Application presented by the petitioner seeking a direction to the respondent to extend the benefits of policy of appointing him of the deceased on compassionate ground.

3] It is brought to our notice that the deceased a widow, mother of the petitioner passed away in the year 1995 leaving behind the petitioner as a son and the sister of the petitioner by name Smt. Jarina Banu. It is contended that somewhere in 2008, an affidavit came to be presented by sister of the petitioner stating that since she is married, instead of her name in the waiting list be substituted by name of the petitioner. It is contended that that the competent authority has done nothing since long and application remained pending. It is stated that the application tendered in the year 2008 was stated to be forwarded with recommendation by the respondents on 20.9.2011. The petitioner was hopeful of securing an employment, however, his request has not yet been considered. The Original Application No.115 of 2013 came to be presented by the petitioner before the Maharashtra Administrative Tribunal was rejected by an Order 6 October 2015.

4] An affidavit has been presented on behalf of the respondents wherein it has been stated that sister of the petitioner, after solemnization of her marriage presented affidavit stating therein to substitute her name in the waiting list by the name of petitioner. Since there was no provision for effecting such substitution, the waiting list was not amended. The learned

counsel for the petitioner controverts the contention that there is no provision of substitution.

5] Even other wise, the belated claim of the petitioner raised in the year 1995 after the demise of her mother, need not be directed to be considered after lapse of about 23 years. The Supreme Court, in the matter of Umesh Kumar Nagpal Vs. State of Hayyana & Ors., reported in (1994) 4 SCC 138, has laid down para meters for consideration of claims in respect of appointment on compassionate ground. It has been held by the Supreme Court, in the aforesaid Judgment, thus:

“The whole object of granting compassionate employment is 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. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of 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. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to

relieve the family of the financial destitution and to help it to get over the emergency.”

6] It is settled law 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. (Bhawani Prasad Sonkar V. Union of India, (2011) 4 SCC 209.) Similar preposition has been laid down by the Hon'ble Supreme Court in the matter of Santosh Kumar Dubey V. State of U.P. reported in **(2009) 6 SCC 481**

and State of Manipur V. Mohd. Rajaodin reported in **(2003) 7 SCC 511.**

7] In view of ration laid down by the Supreme court in the aforesaid matter, this Court need not exercise extra ordinary jurisdiction under Article 226 of Constitution of India. The petition being devoid of merits is accordingly dismissed.

(A.S. GADKARI,J.)

(R.M. BORDE, J.)