

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

WRIT PETITION NO.7367 OF 2016

1. The State of Maharashtra **...PETITIONERS**
Through its Secretary
Public Works Department
Mantralaya, Mumbai-32
2. The Superintending Engineer
Public Works Department,
Osmanabad Division, Osmanabad
3. The Executive Engineer,
Public Works Department,
Osmanabad Division, Osmanabad
4. The Dy.Engineer,
Public Works Department,
Osmanabad Division, Osmanabad

VERSUS

Aref Mohd. Hussain Maniyar **...RESPONDENT**
Age-29 years, Occu-Unemployed
R/o. Lane No.17, Khaja Nagar,
Osmanabad, Tq. & Dist. Osmanabad

Mr.V.J.Dixit, Senior Counsel I/b Mr.S.P.Sonpawale,
AGP for the petitioners/State
Mr.A.S.Bayas, Advocate for the sole respondent

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.**

**RESERVED ON : 25.09.2018
PRONOUNCED ON : 10.10.2018**

J U D G M E N T [PER: S.M. GAVHANE, J.]

. Rule. Rule made returnable forthwith. With the consent of the parties the petition is heard finally at the admission stage.

2. By this petition the petitioners have prayed to set aside the judgment and order dated 29.03.2016 passed by the learned Member (J) of the Maharashtra Administrative Tribunal, Aurangabad in Original Application No.184/2015 filed by present respondent-original applicant whereby the present petitioners /original respondents have been directed to consider the claim of the respondent for appointment on compassionate ground on suitable post and to issue appointment order on such suitable post considering his qualification under the compassionate appointment Scheme as per the Government Resolution dated 28.03.2001 in view of recommendation forwarded by the Public Works Department dated 13.03.2008, within three months from the date of said order.

3. Facts in brief, are that the respondent's father Mohammad Hussain Maniyar was appointed as

Helper in Technical Wing of Public Works Department, Osmanabad on 10.08.1982. After more than 23 years of service he met with an accident and he lost both his legs. He became 50% disable and in spite of that he served the department upto 29.05.2005. On 31.05.2005 he submitted an application for retirement on medical ground due to accident. By letter dated 21.07.2005 he was directed to appear before the Medical Board. On 10.08.2005 he appeared before the Medical Board and the Medical Board issued certificate on 22.08.2005 and opined that he was incapacitate for further service. Considering the said medical certificate the department relieved him from service on 29.08.2005. Thereafter on 25.10.2005 his son respondent herein submitted an application to the present petitioners for seeking appointment on compassionate ground as per Government Resolution dated 28.03.2001. The policy of Government as per Government Resolution dated 28.03.2001 was changed by Government Resolution dated 22.08.2005. The department had recommended the respondent's case to the Government being a special case. The Government by letter dated 16.05.2006 rejected the recommendation for appointment of respondent on compassionate ground on the ground that as per the

Government Resolution dated 22.08.2005 there would be appointment on compassionate ground of the family members of Group-C and Group-D employees in case of death of such employee while in service.

4. After rejection of his claim for appointment on compassionate ground the respondent original applicant filed writ petition No.9055/2016 in this Court and by order dated 14.07.2014 liberty was granted to the respondent to approach the Maharashtra Administrative Tribunal. As such the respondent filed Original Application No.184/2015 before the Maharashtra Administrative Tribunal, Aurangabad requesting that the present petitioners-respondents in original application be directed to consider his claim for appointment on the compassionate ground on the suitable post as per the qualification under the compassionate appointment scheme in view of the recommendation forwarded by the Public Works Department on 13.03.2008. Further it was the case of the respondent that his father appeared before the Medical Board on 10.08.2005 and he was examined by Medical Board. However, the Medical Board issued Medical certificate on 22.08.2005 and as such the Medical Board had taken

more than 12 days in issuing the Medical certificate which shows that his father was unable to work further in department. According to the respondent by communication dated 29.08.2005 his father was allowed to retire on medical ground and he was relieved from the service w.e.f. 29.08.2005 by giving reference to Section 80 of the Maharashtra Civil Services (Pension) Rules, 1982. As per the Government Resolution dated 28.03.2001 it was the policy decision of the Government that the employees who are unable to work in the department on account of Cancer, Paralysis and accident, claim of their relatives for compassionate appointment is required to be considered and said Government Resolution remained inforce till 28.08.2005. As per the Government Resolution dated 22.08.2005 the appointment on compassionate ground could be considered in case of death of employee of Group-C or Group-D in harness. The proposal of the respondent is prior to the issuance of the Government Resolution dated 22.08.2005. Therefore, the said Government Resolution dated 22.08.2005 could not be made applicable to those cases whose process has already been started. Respondent No.3 has specifically recommended the proposal of the

respondent for appointment on compassionate ground however, the claim of the respondent has not been properly considered by respondent No.2. The application of the respondent is to be considered as per the Government Resolution dated 28.03.2001 as the respondent's father retired on medical ground during the existence of the policy decision as per the Government Resolution dated 28.03.2001.

5. The present petitioners/original respondents had filed affidavit-in-reply of Deputy Engineer (Mechanical), PWD, Osmanabad (Exh.C) in original application and denied the contention of respondent that his case has to be considered in pursuance of Government Resolution dated 28.03.2001. It is stated in para No.24 of the affidavit-in-reply as under:-

“24. As regards to contents in Para No.7(24) are disputed. It is true that the Desk Officer P.W.D. Mantralaya has forwarded the proposal to G.A.D. Mantralaya with recommendation that delay is of medical board and applicant is not at fault for delay and therefore his claim be considered.”

Lastly it is stated in the affidavit that

there is no merit in Original Application and it deserves to be dismissed with costs.

6. On considering the contentions of the respondent-original applicant and the present petitioners/original respondents the learned Member (J) of the Maharashtra Administrative Tribunal referring to the Government Resolutions dated 28.03.2001, 22.08.2005 and Rule 80 of the Maharashtra Civil Services (Pension) Rules, 1982 passed the impugned judgment and order. Aggrieved thereby the petitioners have filed this writ petition.

7. Mr.V.J.Dixit, learned Senior counsel who is appointed as special counsel for the petitioners submitted that the department has submitted the proposal to the State Government to consider the case of the respondent being a special case with all the sympathy. However, there is Resolution of Government dated 29.10.2003 and in view of that no power vests with the Government to relax any condition in the matter of compassionate appointment and therefore, the State Government has rightly rejected the recommendation of the department vide

letter dated 16.05.2006. Father of the respondent met with an accident on 08.09.1993. He makes an application for his retirement on 31.05.2005. Thereafter, the said application was considered. There is no delay on the part of the department. In fact, the procedure required under the rule was duly followed. It is submitted that the Government Resolution dated 28.03.2001 regarding appointment on compassionate ground is not applicable to the case of the respondent and his case will have to be considered in the light of new Government Resolution dated 22.08.2005, in this respect which is the policy in existence at the relevant time. Further, it is submitted that the respondent did not challenge the letter dated 17.05.2006 (Exh.R-2) addressed to his father therefore, he is not eligible to be appointed on compassionate ground. Thus, according to the learned Senior counsel the impugned judgment and order is not sustainable and the same may be set aside by allowing the writ petition.

8. To support his submissions the learned Senior counsel has relied upon the decision in the case of MGB Gramin Bank Vs Chakrawarti Singh (2014

13 Supreme Court Cases 583). In the said case father of the respondent was working as a class-III employee with the appellant bank died on 19.04.2006 while in harness. The respondent applied for compassionate appointment on 12.05.2006. During pendency of the application filed by respondent, a new scheme dated 12.06.2006 came into force w.e.f. 06.10.2006. Clause-14 provides that all the applications pending on the date of commencement of the scheme shall be considered for grant of ex-gratia payment to the family instead of compassionate appointment. As the appointment on compassionate ground was denied to the respondent, he preferred the writ petition before the High Court and the learned Single Judge took a view that as the cause of action had arisen prior to the commencement of the new scheme, therefore, the case was to be considered as per the then existing scheme i.e. 1983 scheme which provided for compassionate appointment and not for grant of ex-gratia payment. The Court directed the appellant not only to consider the case of appointment of the respondent on compassionate ground but rather directed the appellant to appoint him. Aggrieved by the said order the appellant filed special appeal which was dismissed by the judgment

and order dated 27.01.2010. Therefore, the appeal before the Supreme Court was filed. In paragraph Nos. 6,9,14 to 17 the Hon'ble Supreme Court has observed thus:

6. Every appointment to public office must be made by 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 breadearner. 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. More so, 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 the distress. It is improper to keep such a case pending for years.

9. The Courts and the tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments.

14. A scheme containing an in pari materia clause,

as is involved in this case was considered by this Court in SBI V. Raj Kumar. Clause 14 of the said scheme is verbatim to Clause-14 of the scheme involved herein, which reads as under:-

14. Date of effect of the scheme and disposal of pending applications- The scheme will come into force with effect from the date it is approved by the Board of Directors. Applications pending under the Compassionate Appointment Scheme as on the date on which this new scheme is approved by the Board will be dealt with in accordance with scheme for payment of ex gratia lump sum amount provided they fulfil all the terms and conditions of this scheme.”

15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc. the application has to be considered in accordance with the scheme. In case the scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In SBI, this Court held that in such a situation, the case under the new scheme has to be considered.

16. In view of the above position, the reasoning given by the learned Single Judge as well as by the Division Bench is not sustainable in the eye of the law. The appeal is allowed and the impugned judgments of the High Court are set aside.

17. The respondent may apply for consideration of his case under the new scheme and the appellant shall

consider his case strictly in accordance with Clause 14 of the said new scheme within a period of three months from the date of receiving of application. With these observations, the appeal stands disposed of.

9. Mr. Bayas, learned counsel appearing for the respondent-original applicant submitted that the petitioners had recommended the case of respondent for appointment on compassionate ground to the Government as a special case. There was delay on the part of the petitioners to consider the case of father of the respondent to retire on medical ground and therefore the case of the respondent is to be considered as per Government Resolution dated 28.03.2001. It is submitted that in such circumstances the Member (J) of the Maharashtra Administrative Tribunal has rightly allowed the original application and issued directions to the present petitioners to consider the claim of the applicant for the appointment on compassionate ground as per the impugned judgment and order. There is no merit in the writ petition and the same is liable to be dismissed.

10. We have carefully considered the submissions made by the learned Senior counsel for

the petitioners and the learned counsel for the respondent. We have gone through the documents produced and the impugned judgment and order.

11. On perusal of the Government Resolution dated 28.03.2001 it is clear that in case Group-C and Group-D employees died in harness or who are suffering from Cancer, Paralysis or who have become unfit due to the accident and who have become incapable prior to attaining the age of 50 years, their eligible family members were being considered for appointment on compassionate ground. On perusal of the Government Resolution dated 22.08.2005 the family members of employee of Group-C and Group-D employee who died in harness are eligible to be considered for appointment on compassionate ground and the said family members have to file application for appointment on compassionate ground within one year of death of the employee as against five years as provided in the earlier Government Resolution. By the said Government Resolution earlier provision of giving employment to family members of employee who has become incapable due to Cancer, Paralysis and accident is cancelled. The Government Resolution dated 22.08.2005 shows that the said Government

Resolution has come into existence from the date of notification i.e. from 22.08.2005. Thus, it is clear from the Government Resolution dated 22.08.2005 that earlier policy as per the Government Resolution dated 28.03.2001 regarding appointment on compassionate ground of family members of Group-C and Group-D employee due to retirement on account different illnesses and accident has been changed by the Government Resolution dated 22.08.2005.

12. According to the respondent he had requested to appoint him on compassionate ground as his father was allowed to retire on medical ground due to accident as per Rule 80 of the MCS (Pension) Rules, 1982. Therefore, it is necessary to refer the said Rule which reads thus:-

Rule-80 Cessation of duty on production of a medical certificate of incapacity.

A Government servant who has submitted under rule 71 a medical certificate of incapacity for further service shall if is on duty, be invalidated from service from the date of relief from his duties, which should be arranged without delay on receipt of the medical certificate, or if he is granted leave under rule 43 of Maharashtra Civil Services (Leave) Rules, 1981 on the expiry of such leave. If he is on leave at the time of submission of the medical certificate, he shall be invalidated from service on the expiry of that leave or extension of leave, if any, granted to him under the rule 43

of Maharashtra Civil Services (Leave) Rules, 1981.

Note: the period allowed for arranging the relief of a Government Servant on duty who is incapacitated for further service of any kind should not exceed seven days from the date of the medical certificate. A departure from this rule should not be made without very special reasons which must be reported to Government for approval. Without special orders from Government, service rendered after the period of seven days from the date of such medical certificate, will not count for pension.

On plain reading of the above rule it is clear that if the Government servant produced medical certificate of incapacity for further service, said servant is to be invalidated from service without delay on receipt of the medical certificate and if he is on leave, he shall be invalidated from the service on the expiry of that leave.

13. Now we shall proceed to consider whether the impugned judgment and order is sustainable?. There is no dispute that after his appointment as a Helper with Public Works Department, Osmanabad, which appears Class-IV posts or Group-D post on 10.08.1982 the father of the respondent rendered more than 23 years service and as he met with an

accident on 08.06.1993 he lost his both the legs and suffered 50% permanent disability. Thereafter, on 31.05.2005 father of the respondent requested present petitioner No.3- Executive Engineer in writing to allow him to retire on medical ground by doing needful. Thereafter, by letter dated 21.07.2005 he was referred to Medical Board. The Medical Board examined him on 10.08.2005 and issued certificate of incompetency on 22.08.2005. Thereafter, he (father of respondent) was allowed to retire on medical ground by communication dated 29.08.2005 from the said date. The respondent's father died on 14.05.2006. The respondent made application on 25.10.2005 to the petitioners seeking appointment on compassionate ground as per the Government Resolution dated 28.03.2001. Department recommended the respondent's case to the Government being a special case. The Government by letter dated 16.05.2006 rejected the recommendation of the department for appointment of respondent on compassionate ground informing that in view of the Government Resolution dated 22.08.2005 Clause 2(1) appointment on compassionate ground on account of retirement on medical ground is not permissible. So also, there is no dispute that by letter dated

17.12.2005 (Exh.R-1) father of the respondent was informed that since the Government Resolution dated 22.08.2005 appointment on compassionate ground is permissible only to the family members of Group-C and Group-D employee died in harness application dated 25.10.2005 of the respondent cannot be considered. Moreover, there is no dispute that father of the respondent was informed by letter dated 17.05.2006 (Exh.R-2) that only the family members of Group-C and Group-D employee who died in harness are eligible to be appointed on compassionate ground and that terms and conditions in this respect can not be relaxed in view of the Government Resolution dated 29.10.2003. Admittedly respondent is not yet appointed in pursuance of the impugned judgment and order.

14. From the above admitted facts, it is clear that on 31.05.2005 father of the respondent applied for retirement on medical ground and after getting medical certificate dated 22.08.2005 he was allowed to retire on 29.08.2005. Thus, it is obvious that cause of action to his son respondent to claim appointment on compassionate ground has arisen only on the retirement of his father on 29.08.2005.

Naturally, therefore, request of respondent to consider him for appointment on compassionate ground would be governed by policy of Government in this respect existing at that time. There is no dispute that at the time of retirement of father of the respondent on 29.08.2005 the Government Resolution dated 22.08.2005 regarding appointment on compassionate ground was operating and by the said resolution earlier policy about the appointments on compassionate ground of family member of Group-C and Group-D Government employee due to retirement on the ground of illness and accident was changed and as per the changed policy as per the Government Resolution dated 22.08.2005 only the family members of those Group-C and Group-D employee who died in harness are eligible to be appointed on compassionate ground. In the present case respondent claims appointment on compassionate ground as his father retired on medical ground due to accident and not on the ground that his father died in harness. Admittedly, the respondent's father died on 14.05.2006 after retirement on 29.08.2005. Therefore, there is no question of considering the respondent's case for appointing him in view of Government Resolution dated 22.08.2005.

15. The respondent claimed that the Government Resolution dated 28.03.2001 is applicable to his case and not the Government Resolution dated 22.08.2005 as process of retirement on medical ground of his father was already started prior to the Government Resolution dated 22.08.2005. This contention and argument advanced on behalf of the respondent in this respect appears attractive but same is not acceptable in view of the fact that cause of action to the respondent to claim appointment on compassionate ground has arisen only on 29.08.2005, on retirement of his father after change in policy of compassionate appointment as per the Government Resolution dated 22.08.2005. Of Course the process of allowing the father of respondent to retire on medical ground was started on 31.05.2005 as per his application of said date and it was continued till the date of subsequent Government Resolution dated 22.08.2005. But, applying the ratio laid by the Hon'ble Supreme Court in the case of *MGB Gramin Bank (supra)* it cannot be said that merely because the process of retirement of father of respondent was started prior to the Government Resolution dated 22.08.2005 and his

application to allow him to retire was pending on the date of said resolution, the case of respondent regarding appointment will have to be considered as per the earlier Government Resolution dated 28.03.2001 when new policy regarding appointment on compassionate ground as per the Government Resolution dated 22.08.2005 has come inforce and the said new policy is made applicable from the date of said Government Resolution to such appointment.

16. As referred earlier, it is submitted on behalf of the respondent that there was delay in processing the proposal of retirement of father of respondent by the present petitioners and hence Government Resolution dated 28.03.2001 is applicable to this case. As said earlier after receiving the application dated 31.05.2005 of the father of the respondent to allow him to retire on medical ground, he was referred to Medical Board by the petitioners by letter dated 21.07.2005 and actually he was examined on 10.08.2005 and the certificate was issued by the Medical Board on 22.08.2005. Thus, there was delay on the part of the present petitioners to refer father of the respondent to the Medical Board and subsequently there was delay in

issuing certificate on 22.08.2005 after he was examined on 10.08.2005 by the Medical Board. But, as observed above when the change in policy of appointment on compassionate ground has come in force on 22.08.2005, the father of the respondent was allowed to retire on 29.08.2005 and when the Government Resolution dated 29.10.2003, as mentioned in the letter (Exh.R-2), does not permit to relax the terms and conditions in respect of appointment on compassionate ground merely because there was delay as above the Government Resolution dated 28.03.2001 cannot be made applicable to the case of the respondent. In such circumstances, observations of the learned Member (J) of the Maharashtra Administrative Tribunal; that there was tremendous delay on the part of the department in not sending the father of the respondent immediately for the medical examination before the Board and had the respondent's father being allowed to retire on medical ground immediately his LR's would have been considered for appointment on compassionate ground as his case was referred as a special case to the competent authority and therefore, the respondent is entitled to appointment as a special case; are incorrect in view of the decision in the case of *MGB*

Gramin Bank (supra). For these reasons argument as above advanced by the learned Advocate for the respondent is not accepted.

17. Record shows that by letter dated 16.05.2006 addressed to Executive Engineer, Public Works Department, Osmanabad copy of which was marked to the respondent, he was informed that in view of Clause 2(1) of the Government Resolution dated 22.08.2005 on account of retirement on medical ground he is not eligible to be appointed on compassionate ground. So also, as referred earlier Mr. Dixit, learned Senior Counsel for the petitioners submitted that the respondent did not challenge the letter dated 17.05.2006 (Exh.R-2 Page-72) whereby his father was informed that in view of the Government Resolution dated 22.08.2005 only the family members of the Group-C and Group-D employee who died in harness are entitled to be appointed on compassionate ground and as per the Government

Resolution dated 29.10.2003 relaxation in terms and conditions in respect of such appointments is not permissible. On perusal of the copy of Original Application No.184/2015 it appears that the respondent had not challenged above said both the letters and no prayer was made to quash and set aside the said letters. In fact, the respondent should have prayed to quash and set aside the said letters. In such circumstances, without setting aside the said letters and particularly letter dated 16.05.2006 which is referred in the impugned judgment directions issued by the learned Member (J) of the Maharashtra Administrative Tribunal to appoint the respondent on compassionate ground are not proper.

18. For the reasons discussed hereinabove, we hold that the respondent is not entitled to appointment on compassionate ground. As such the

impugned judgment and order directing the present petitioners to appoint the respondent on compassionate ground on suitable post is not legal and correct. Therefore, the same is not sustainable and it deserves to be quashed and set aside. Accordingly, we allow the writ petition and the impugned judgment and order dated 29.03.2016 passed by the learned Member (J) of the Maharashtra Administrative Tribunal, Aurangabad is quashed and set aside. Rule is made absolute accordingly. No order as to costs.

[S.M.GAVHANE, J.]

[S.V. GANGAPURWALA, J.]