

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.211 OF 2017

Shri Ambrish Anil Kotharkar,
Age 30 years,
S/o. Late Anil Vithoba Kotharkar,
At Kasarkhand Wada, P.O. Kinnar,
Karwar, Uttarkannada.

...Petitioner.

Versus

1. State Of Goa
Through the Chief Secretary
Having its office at Secretariat
Porvorim- Goa.

2. The Director General of Police,
Goa Police Head Quarters,
Government of Goa,
Panaji, Goa.

...Respondents

Mr. M. Amonkar, Advocate for the Petitioner.

Mr. Deep Shirodkar, Addl. Government Advocate for the
Respondents.

Coram : N.M. Jamdar &
Nutan D. Sardessai, JJ.

Date : 21 February 2018

ORAL JUDGMENT (Per N.M. Jamdar,J):

Rule. Rule made returnable forthwith. Respondents waive service. Taken up for disposal.

2. The petitioner is seeking appointment on compassionate basis in the services of the State of Goa. The father of the Petitioner was working as a constable in the Police Department. He was attached to Quepem Police Station. Petitioner's father expired on 7 September 2009. The Petitioner was ,at that time, and till today, is residing in the State of Karnataka. On 18 October 2009, the Petitioner applied for an appointment in the Police Department of the State of Goa, on compassionate basis. On 8 April 2010, the Authorities directed the Petitioner to produce certain documents. The matter thereafter was pending for the production of documents. On 7 August 2013, a communication was issued by the Respondent No.1-State to the Respondent No.2-Director General of Police stating that the Petitioner's case cannot be considered as he did not produce the Residence Certificate of 15 years in the State of Goa, as mentioned in the Office Memorandum dated 11 February 2013, issued for appointments on compassionate basis. This fact was informed to the Petitioner on 28 August 2013 by the Director General of Police. Thereafter, the Petitioner made a representation to

the Chief Minister for waiving the condition of requirement of 15 years residence in State of Goa. The Petitioner made another representation on 30 May 2014, which was rejected on 6 June 2014. Thereafter the Petitioner filed the present petition on 21 August 2017.

3. The petitioner has prayed for the following two reliefs.

(a) *To declare that, condition No.5 of O.M. No. 10/1/86-PER(Part file) dated 11.02.2013 of compulsory residence of 15 years in Goa for appointment on compassionate grounds.*

(b) *This Hon'ble Court be pleased to issue writ of Mandamus or writ in the nature of Mandamus or any other appropriate order directing the respondent No.1 to waive the condition No.5 of O.M. No. 10/1/86-PER(Part file) dated 11.02.2013 of residence of 15 years in Goa and to direct the respondents to consider the case of the petitioner for appointment on compassionate grounds."*

4. From reading of the prayer clause (a), it is not discernable whether the condition No.5 relating to 15 years of residence is under challenge. Even otherwise, we do not find any pleadings as to why the condition No.5 has to be declared as unconstitutional or ultra vires of any statutory instrument. Nothing is urged before us in this

regard. In fact what is pressed before us is the prayer clause(b). By prayer clause (b) the Petitioner seeks a writ of Mandamus for directing Respondent No.1 to waive the condition No.5 of residence of 15 years in Goa and to direct the Respondents to consider the case of the Petitioner for appointment on compassionate basis.

5. Mr. Amonkar, the learned Counsel for the Petitioner contended that the Petitioner's father had married for the second time and was living with the second wife in the State of Goa and he had driven away the Petitioner and his mother, the first wife out of the house, and they were residing at Karwar in the State of Karnataka. It was contended that in these circumstances the Petitioner could not fulfill the requirement of 15 years residence. It was contended that the requirement of 15 years residence is not necessary or relevant when an appointment on compassionate basis is sought and this condition can be therefore relaxed. Mr.Amonkar contended that the Office Memorandum dated 11 February 2013, which imposed the condition of 15 years residence, is not retrospective in effect and the application of the Petitioner in the year 2009 was prior to the issuance of the Memorandum. The learned Counsel contended that considering the totality of the circumstances and looking at the object of the compassionate appointment, the reliefs as sought be granted in favour of the Petitioner.

6. Mr. Shirodkar, learned Additional Government Advocate opposed the prayer, contending that the appointments on compassionate basis are an exception to regular mode of recruitment and the applications have to be considered strictly within the parameters of the policy and only if the applicant is otherwise eligible. It was contended that even prior to the Memorandum dated 11 February 2013, the circular dated 18 August 1998 was in force, laying down the condition of the 15 years Residence Certificate. Mr. Shirodkar, relied upon the decision of the Apex Court in the case of *State of J & K and others v/s. Sajad Ahmed Mir*¹.

7. The Petitioner's father expired in the year 2009. Eight years after, in the year 2017, the Petitioner has filed the Writ Petition seeking appointment on compassionate basis. The Petitioner made a representation and there was no serious follow up as such for four years. Even after his application was rejected in the year 2013, he did approach the Court, but chose to make one more representation to the State Government. When his representation was rejected in the year 2014, the Petitioner filed the petition after three years. This is not the conduct of a person who is in need of employment to support the bereaved family. The object of granting appointments on compassionate basis is to help the family of the Government servant

¹ (2006)5 SCC 766

who dies in harness to tide over the sudden crisis and turmoil. The compassionate appointment Schemes do not create an automatic vested right for appointment in all the situations, nor they are meant to open up an alternate source of recruitment. Keeping this object in mind, the public bodies have framed their policies regulating the compassionate appointments. The applications for compassionate appointments will have to be considered within the parameters of the policy. The primary rule for entry in public service is that it has to be through public participation. The Courts cannot, on account of mere sympathy, direct appointments *de hors* to the rules.

8. The Office Memorandum dated 11 February 2013 lay down the criterias for compassionate basis in the State of Goa. One of the condition is that the candidate must possess a Certificate showing 15 years of Residence in the State of Goa. The question is whether the policy, in which the 15 years residence is clearly stipulated, can be held to be arbitrary, absurd or irrelevant. Generally the matters of policy are best left to the executive. It is not prudent to pervert the intention of the policy, merely because the court feels that a more fairer policy is possible. It may be necessary for the State to ascertain the applicants antecedents and the financial position before considering the application. It may be the reason why such condition has been imposed, apart from the other criterias required. It cannot be

said that this criteria is wholly irrelevant and entirely absurd. The compassionate appointment, being an exception to the general rule of public participation, has to be claimed strictly in accordance with the terms of policy.

In the light of the decision of the Apex Court in the *Sajad Ahmed Mir*, cautioning the courts not to direct appointments on compassionate basis contrary to the policy, it is not possible to issue a Mandamus as sought for directing the Respondent No.1 to waive the condition neither the condition can be considered as wholly irrelevant. The argument that the Petitioner could not stay in the State of Goa because of lack of job opportunities, is too simplistic to be accepted. Such casual and unverifiable stand can be taken by any candidate.

9. The contention of the Petitioner that the Memorandum of the year 2013 will not have retrospective effect and the criterion will not apply to the petitioner, has no merit. The circular dated 18 August 1990 issued by the State of Goa clearly stipulated the requirement of 15 years Residence Certificate. Thus this condition was present even prior to the year 2013. Mr. Amonkar contended that this Circular applied only to the regular appointments. However, in the first paragraph of the Circular of 1990, all types of

appointments, including daily wages, casual, work charges, NMR and the like staff etc. have been specified. If the petitioner would have applied as regular candidate he could not have appointed for want of the Certificate. No policy governing appointments on compassionate basis prior to the year 2013 is placed before us.

10. Even otherwise the Petitioner has approached this Court with delay of three years. We cannot be oblivious of the fact that there are thousands of applicants waiting for appointment in public service through the regular channel.

11. No case is made out for grant of reliefs prayed for. The Writ Petition is dismissed. Rule is discharged.

Nutan D. Sardesai, J.

N.M. Jamdar, J.