

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 357 of 2014

Smt. Snehal Chandrakant Shetye

2. Shri Gaurav Chandrakant Shetye,
Both residing at 1/315, Sri Vardhan, Utkarsha
Nagar, Kuvarbav, Ratnagiri. ... Petitioners

V/s.

1. The State of Maharashtra
Through Law & Judiciary Department
Having their office at Mantralaya,
Mumbai 400 023.

2. The Registrar (Personnel),
High Court Appellate Side,
Mumbai.

3. The Principal District & Sessions Judge
Ratnagiri. ... Respondents

Mr. Rajesh S. Patil for the petitioners.

Mr. Rahul Nerlekar for respondents 2 and 3.
Mr. A.P. Vanarase, AGP for respondent no.1.

***CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.***

***RESERVED ON :- 13th April, 2018.
PRONOUNCED ON :- 28th June, 2018.***

JUDGMENT (PER NARESH H. PATIL,J)

The petitioner no.1 mother seeks direction to appoint her son petitioner no.2 on compassionate ground in Group-C in the respondent no.3, District Court, Ratnagiri. It is stated that petitioner no.1 is a widow and petitioner no.2 is elder son of late Chandrakant R. Shetye who worked as Stenographer with respondent no.3- the Principal District and Sessions Judge, Ratnagiri. The husband of petitioner no.1 died on 25th September, 2006.

2. The petitioners challenges the validity of rules 7(a) and 7(c) of the Bombay High Court Revised Guidelines for Appointment On Compassionate Ground, 2007 being violative of Article 14 of the Constitution of India.

3. The petitioner had passed 9th Standard examination at the time of death of her husband. The petitioner no.2 and his brothers were minor and studying in school. The petitioner decided to apply for employment of petitioner no.2 on compassionate ground and accordingly by an application dated 30th October, 2006 an appointment was sought on compassionate ground by addressing a communication to respondent no.3.

4. The petitioners received a copy of Pension payment order dated 29th December, 2006 from the office of the Accountant General (A & E) informing that they would be receiving pension of Rs.7613/- from 26th September, 2006 to 25th September, 2013 and thereafter Rs.4568/- per month from 26th September, 2013 till the death of petitioner no.1.

5. It is contended that by communication dated 17th January, 2007 the office of respondent no.3 informed the petitioner no.1 that they had by their letter dated 21st November, 2006 forwarded her

application to respondent no.2 who have replied by letter dated 11th January, 2007 stating therein that the application submitted by the petitioner will be considered only after the petitioner no.2 attains the age of majority. It is the petitioner's contention that since there was sudden crisis on the demise of her husband and the family was facing hardship and financial crisis, appointment on compassionate ground was necessary. The pension amount received by her was not sufficient to satisfy the needs of the family and the growing minor children of the petitioner no.1. The petitioner no.2 passed SSC examination in Grade-I in the month of March 2008 and thereafter HSC examination in Grade II in the month of March 2010. The petitioner no.2 passed the typing examination in the month of November 2009. He also passed Maharashtra State Certificate in Information Technology (MS-CIT) with 70% marks in the month of July 2008.

6. The petitioner no.1 submitted an application for appointment on compassionate ground for petitioner no.2 on 18th April, 2011 with

the office of respondent no.3 again. A communication was sent by respondent no.3 on 15th July, 2011 informing about the requirements sought by the officer of respondent no.2. The petitioners by their letter dated 25th July, 2011 furnished all the information sought by the office of respondent no.3. The petitioner thereafter did not receive any communication of the respondents till June 2012. A further communication was sent by petitioner no.2 dated 3rd August, 2012 to respondent no.2. These communications are placed on record. The petitioner no.2 received the reply dated 27th August, 2013. By a communication addressed by respondents no.3 on 20th August, 2013, it was informed to the petitioner that their application for compassionate appointment was rejected. Certain information was sought under the Right to Information Act which was furnished to the petitioners. The petitioners even obtained copies of The Bombay High Court Revised Guidelines for Appointment On Compassionate Ground 2007. The present petition was filed in the month of January 2014.

7. An affidavit-in-reply is filed by respondents 2 and 3 through Registrar, Legal and Research, High Court Appellate Side, Bombay.

In paragraphs 3 and 15 of the reply deponent states as under:-

“ I say that in the present case, the judicial employee died on 25/09/2006, while in service leaving behind 3 dependents viz. Petitioner No.1 and two sons. I say initially, after the death of the judicial employee, the Petitioner No.1 had sent an application stating that her mental condition is not good and requested to reserve claim of her minor son i.e. the Petitioner No.2, who was then 14 years old, till he attains the age of majority. I say that the application was considered by the then Registrar General and he was pleased to direct the concerned to inform the Petitioners that the application of her son can be considered only on attaining the age of majority and on his becoming eligible for employment on compassionate ground and the Petitioners were informed accordingly. I further say that the Petitioner No.2 made an application dated 18/4/2011 after attaining the age of majority I say that he has passed 12th standard examination and he has

also passed English typing @ 40 w.p.m and Computer course of MS-CIT. The Petitioner No.2 is however, not graduate and does not possess the requisite technical qualification of Marathi typing @ 30 w.p.m for appointing him to the post of Junior Clerk. I say that the Petitioner No.1 has received benefits of Rs.8,12,265/- and she gets family pension of Rs.16,139/- (including 58% D.A.) per month which exceeds the total emoluments of Group 'C' employee of the lowest rank which comes to Rs.13,974/- p.m. I further say the family members of the deceased own a residential house admeasuring 550 sq.ft in the name of the Petitioner No.1 at Ratnagiri and ancestral house to the extent of 1/3 share of the applicant. I say that as per Clause &(a) and 7(c) of the Bombay High Court revised Guidelines for appointment of Compassionate Ground 2007, the Scheme shall apply only if, the family deserves immediate assistance for relief from financial destitutions and the total monthly income of such family is less than the total emoluments of Group 'C' employee of the lowest rank. I say that, therefore, as the income of the

Petitioner's family exceeds the total emoluments of Group 'C' employee of the lowest rank, the Petitioner No.2 is not entitled to appointment on compassionate ground to the post of "Junior Clerk".

"15. With reference to para 13 of the petition under reply, I say that the Petitioners produced copy of the Bombay High Court Revised Guidelines for appointment on compassionate ground, 2007. I deny and do not admit that Clauses 7(a) & 7(c) of the scheme are in any manner arbitrary or illegal. In fact having regard to the object underlying the principles on which appointments are made on compassionate grounds, Clauses 7(a) and 7(c) cannot be said to be arbitrary."

8. The petitioners filed affidavit-in-rejoinder. The learned Counsel appearing for the petitioners submitted that the view adopted by the respondent administration is erroneous and contrary to the established principles of law. It is submitted that the rules framed by the High Court in this regard are unreasonable and they

deserve to be quashed and set aside. The petitioner's family is facing financial hardships and though petitioner has done L.L.B. Course, he badly requires an employment. He is willing to join the post. In accordance with the intimation received from respondent no.2 High Court after scrutiny, the mother of the petitioner filed an application which ought not to be rejected on the ground of delay.

9. The Counsel appearing for High Court administration submitted that the scheme framed by the High Court more particularly the provisions of Clauses 7(a) and 7(c) of the Bombay High Court Revised Guidelines for Appointment on Compassionate Ground framed in the year 2007 is reasonable and proper one. There is no ambiguity in the same. The grounds raised for challenging the validity of the guidelines/rules are not convincing. On merits the Counsel submitted that the Guidelines framed in the year 2002 are not applicable to the present case. The candidate was not eligible in respect of scheme framed in the year 2002. Neither he is eligible under the present scheme. Considering the criteria of

emoluments set out under the Scheme of 2002 and 2007, petitioner no.2 is not eligible to be appointed on compassionate ground. The learned Counsel further submitted that the father of the petitioner died in the year 2006 and it would be highly unreasonable to issue directions to appoint the petitioner no.2 after near about 10-12 years. The petitioner has passed law degree and even the LLM degree in the year 2007. He is a practicing lawyer at Ratnagiri, therefore, there is no question of any financial stringency or hardship faced by the petitioner no.2 or his family.

10. Perused the record and The Bombay High Court Revised Guidelines for Appointment on Compassionate Ground (hereinafter referred to as 'the guidelines'), of the year 2002 and 2007.

Clause-6 of Guidelines of the year 2002 read as under:

“6. Eligibility

The scheme shall apply only if :-

- (a) The family is indigent and deserves immediate assistance for relief from financial destitution; and Applicant for compassionate appointment is eligible and

suitable for the post in all respects under the provisions of relevant Recruitment Rules.

Explanation : For the purpose of this rule (i) family would be deemed to comprise of relations listed in rule 3(I) of these rules, and (ii) a family would be deemed to be “indigent” only if total monthly income of all members of such family is less than the total emoluments of Group 'C' employee of the lowest rank of the minimum of Pay Scale OR emoluments of employee on whose demise/retirement, appointment on compassionate ground is sought whichever is higher.”

Clause-7 of the Guidelines of the year 2007 reads as under:-

“7. Eligibility:-

The scheme shall apply only if :-

- (a) The family deserves immediate assistance for relief from financial destitution; and
- (b) Applicant for compassionate appointment is eligible and suitable for the post in all respect under the provisions of relevant Recruitment Rules.
- (c) The total monthly income of such family is less than the total emoluments of Group “C” employee of the lowest rank.”

11. The learned Counsel appearing for the petitioner has relied on two judgments in the case of ***Syed Khadim Hussain v/s. State of Bihar***¹ and in the case of ***Canara Bank & anr. V/s. M. Mahesh Kumar***².

12. The learned Counsel for respondents placed reliance on the judgments in the case of ***Sanjay Kumar v/s. State of Bihar & ors.***³ Paragraph-3 of the judgment reads as under:

“3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in *Director of Education V.*

1 2005 DGLS (SC) 20

2 2015 DGLS (SC) 641

3 (2000) 7 Supreme Court Cases 192

Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 2-6-1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.”

And judgment in the case of ***Chief Commissioner, Central Excise and Customs, Lucknow & ors. V/s. Prabhat Singh***⁴. Paragraph-19 of the order reads as under:-

“19. The courts and tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. The courts are not supposed to carry Santa Claus's big bag on Christmas eve to disburse the

4 (2012) 13 Supreme Court Cases 412

gift of compassionate appointment to all those who seek a court's intervention. The courts and tribunals must understand that every such act of sympathy, compassion and discretion wherein directions are issued for appointment on compassionate grounds could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion.”

13. We have perused the aforesaid citations relied upon by learned Counsel for the parties.

14. The principle behind compassionate appointment is that in case of an employee dying in harness, his or her dependents is given a job with the sole object to provide immediate financial relief to the family. Due to sudden loss of the bread earner, the family would find itself in dire need of an assistance. The question is in the facts of the case as to whether the need for financial assistance still subsides after near about 10-12 years of the death of father of the

petitioner no.2. We may refer to some of the views of the Apex Court in this regard. In the case of ***Local Administration Department & anr. V/s. M. Selvanayagam alias Kumaravelu***⁵ the Apex Court observed in Paragraphs 11 and 13 as under:

“11. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the breadwinner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of

5 (2011) 13 Supreme Court Cases 42

the dependents of the deceased employee would be directly in conflict with Articles 14 and 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

13. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on 2-7-1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to subserve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service.”

15. In the facts, we find that when petitioner no.1 applied for petitioner no.2, he was a minor. His father died in the year 2006.

He became major in the year 2010. Thereafter, mother of the petitioner again filed an application for getting employment for the petitioner no.2 in accordance with the provisions of the Guidelines of 2007. In the facts and circumstances and in view of the guidelines, administration did not find favour with the request made by the petitioner no.2 and the request came to be rejected.

16. This petition came to be filed in the year 2014. It is informed that the petitioner is a law graduate and a practicing advocate. He has done his L.L.M. course too. The purpose of the compassionate scheme is to help the family of the employees to make over sudden financial crisis on the death of the bread earner.

17. The view adopted by the respondent administration is keeping in view facts circumstances and the scheme framed by the High Court. We are not inclined to interfere into the decision taken by the respondent.

18. On the grounds raised in the petition, we do not find that a

case is made out for sustaining challenge to clauses 7(a) and 7(c) of the Guidelines, 2007. For the reasons stated above, the Petition stands dismissed. No costs.

(G.S. KULKARNI, J)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.