

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8771 OF 2015

Shri. Dhulaji Shrimant Kharat

Age-22 years, Occ-Nil

R/o-at post-Kurul, Tal-Mohol

Dist-Solapur

....Petitioner

V/s.

1. State of Maharashtra

Through Principal Secretary,
Irrigation Department, Mantralaya,
Mumbai-400 032.

2. The Superintendent Engineer,
Bhima Kalwa Mandal, Solapur

3. The Superintendent Engineer,
Irrigation Department, Zone No.1,
Solapur.

4. The Sub-Divisional Officer,
Bori Medium Project, Solapur

5. The Executive Engineer,
Irrigation Department, Zone No.1,
Solapur

....Respondents

* * * * *

Mr. Rajshekhar S. Alange, Advocate for the petitioner.

Mr. Y.S. Khochare, AGP for respondent no.1.

Mr. Vijay D. Patil, Advocate for respondents no.4 and 5.

*Coram : A.S. Oka, &
 Sandeep K. Shinde, JJ.*
Resd. on : 4th December, 2018.
Pron. on : 12th December, 2018.

ORAL JUDGMENT (Per : Sandeep K. Shinde, J) :

1. The petitioner seeks a writ of mandamus to enjoin the respondents to employ the petitioner on compassionate ground.

2. Petitioner's father, Shrimant Tukaram Kharat ('deceased' for short) was working as a Driver with the Bori Medium Project, Solapur, died in harness on 12th January, 2008. As on that date, the petitioner was minor. His date of birth is 1st May, 1992. Deceased left behind him two minor daughters, two minor sons and wife. It is the petitioner's case that, on 30th June, 2008 her mother sworn an Affidavit whereby she submitted particulars of the legal

representatives of the deceased and requested respondents no.2 and 3 to consider her application for appointing her son on compassionate ground upon attaining the age of majority.

3. That vide letter dated 1st June, 2013, the petitioner requested the respondent no.3 to consider the application preferred by his mother in June, 2008. It was not responded by the respondent no.3 and thus on 9th June, 2014 the petitioner again submitted an application with relevant documents and requested respondents no.2, 3, 4 and 5 to consider his case for appointment on compassionate ground. This application was forwarded to Executive Engineer-respondent no.5 for consideration. It appears, respondent no.2-Superintendent Engineer addressed a letter to the Executive Engineer on 18th July, 2014 and acknowledge the fact that petitioner's mother had submitted an application and affidavit dated 30th June, 2008. The respondents, however, declined to consider the request on the ground that the petitioner had not filed an application within one year from the date on which he

attained the age of majority.

4. It is in the aforesaid circumstances, the petitioner has preferred this petition under Articles 226 and 227 of the Constitution of India and sought a writ of mandamus to the respondents to appoint him on compassionate ground.

5. Heard learned Counsel for the petitioner, learned AGP for the respondent no.1 and learned Counsel for the respondents no.2 to 5.

6. It is not in dispute that, father of the petitioner died in harness on 12th January, 2008 leaving behind him two minor daughters, three minor sons and wife. It is not in dispute that, petitioners mother had applied and requested the respondents to appoint her son on compassionate ground upon he attaining the age of majority. This request was made in the form of an Affidavit dated 30th June, 2008 sworn by the mother of the petitioner, after within five months of the incident of death.

7. We have perused the Affidavit of Executive Engineer-respondent no.5 who while declining the request of the petitioner has relied on G.R. dated 11th September, 1996 and G.R. dated 22nd August, 2005. These resolutions prescribe time period within which applications were to be made by eligible persons seeking appointment on compassionate ground. The G.R. of 1996 ordains minor heir/dependent of deceased who died in harness to make an application within one year from the date of attaining the age of majority. The next G.R. of 2007 has curtailed the period of limitation for making application from five years to one year. In our considered opinion, respondents could not have rejected the request of the petitioner, since his mother had applied and requested the respondent in June, 2008 (i.e. within five months) from death of her husband for the grant of employment to her son on compassionate ground, although he was minor at the given point of time. We have perused the Affidavit-cum-application dated 30th June, 2008. It contains all particulars which were otherwise required for processing application. In fact, again in June, 2012 the petitioner renewed his request to

consider the application made by her mother in 2008. It is in these circumstances, in our view, petitioner has substantially complied with the terms and conditions of the policy of the State formulated for appointment on compassionate ground. In the given set of facts, we hold the respondents were not justified in rejecting the application, merely because the petitioner did not apply within a year from the date of his attaining majority.

8. Thus, considering the facts of the case, we are of the view that the petition deserves to be allowed by directing respondents no.2 to 5 to consider the case of the petitioner for his appointment on compassionate ground by holding that the application for appointment on compassionate ground was preferred within the permissible period. The petition is allowed in the aforesaid terms. Hence, the following order :

(a) The respondents are directed to consider the application preferred on 30th June, 2008 for appointing him on

compassionate ground within a period of three months from the date on which this order is uploaded.

(b) The petition is disposed of in above directions. No costs.

(SANDEEP K. SHINDE, J)

(A.S. OKA, J)