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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8421 OF 2017

Rahul Laxman Koli .. Petitioner

Vs.

The Maharashtra State Electricity
Distribution Company & ors. .. Respondents

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Shri K.U. Nikam, Advocate for the Petitioner.
Mrs. M.P. Thakur, AGP for State / Respondent No.5.
Ms. A.R.S. Baxi, Advocate for Respondent Nos. 1 to 4.

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**CORAM : R.M. SAVANT, &
M.S. KARNIK, JJ.**

DATE : 1st OCTOBER, 2018

P.C. :

Rule. Considering the challenge involved in the
Petition made returnable forthwith and heard.

2. The writ jurisdiction of this Court under Article 226 of the Constitution of India is invoked against the order/communication dated 5/11/2015 by which communication the Respondent No.2 herein i.e. The Superintending Engineer Maharashtra State Electricity Distribution Company has rejected the Petitioner's application

for appointment on compassionate grounds. It is not necessary to burden this order with unnecessary details. Suffice it would be state that the father of the Petitioner one Laxman Koli was working as a Senior Technician with the Respondent No.1. The said Laxman Koli expired on 10/11/2011 whilst he was in service. It seems that after the death of the Petitioner's father the family was being paid subsistence allowance as per the policy of the Respondent No.1. The Petitioner made an application for compassionate appointment on 4/7/2014 along with the necessary documents which are required to be submitted with such an application. The Petitioner thereafter on 17/10/2014 submitted further documents which were in addition to the documents which had already been submitted earlier.

3. It seems that the Petitioner complied with all the requisitions made by the Respondent No.1. Ultimately the Respondent No.1 called upon the Petitioner to submit proof to show that his sister was separately residing prior to the demise of the father of the Petitioner. The Petitioner accordingly

submitted the said document also which was in the form of the first page of the service book of his sister Swati. The Petitioner's application thereafter came to be rejected by the impugned order/communication dated 5/11/2015. A reading of the impugned order/communication especially its material part discloses that the Petitioner's application for appointment on compassionate grounds has been rejected solely on the ground that the Petitioner had not submitted the document showing that his sister Swati was residing separately prior to the death of the father of the Petitioner. As indicated above, it is the said order/communication dated 5/11/2015 which is taken exception to by way of the above Petition.

4. Heard the Learned Counsel for the parties.

5. The Learned Counsel Mr. Nikam, appearing on behalf of the Petitioner would submit that the Petitioner having submitted all the documents, the Petitioner's application ought to have been held has to be in order and that the Petitioner

should have been given the benefit of compassionate appointment, it was the submission of the Learned Counsel that the application of the Petitioner would not have been rejected on account of the alleged non compliance of the requirement as mentioned in the impugned order/communication dated 5/11/2015.

6. Per contra, the Learned Counsel Ms. Baxi appearing on behalf of the Respondent Nos. 1 to 4 would support the impugned order and would contend that the Petitioner has not complied with the Condition (A) of the Service Regulations, 2005, which condition has been mentioned in the letter dated 24th September, 2015 addressed by the Respondent No.1 to the Petitioner. It was also the submission of the Learned Counsel Ms. Baxi that though the Petitioner's father had expired in the year 2011, the application for compassionate appointment was only made in the year 2014, therefore a good three years after the death of the father of the Petitioner. The said fact according to the Learned Counsel indicates that the Petitioner was not in

need of service and had therefore not applied for taking the benefit of the compassionate appointment with promptitude. It was therefore the submission of the Learned Counsel that no relief can be granted to the Petitioner in the above Writ Petition.

7. We have heard the Learned Counsel for the parties. As indicated in the earlier part of this judgment, the Petitioner's application has been rejected solely on the ground that the Petitioner had not furnished documentary evidence to show that the Petitioner's sister was staying separately from the family after she got employment. The said condition is reflective of Clause (A) of Schedule 'J' of the Maharashtra State Electricity Distribution Company Limited Classification and Recruitment Rules, 2005 which clause for the sake of ready reference is reproduced hereunder :- (translated)

“(A) Prior to death / before taking voluntary retirement on medical grounds before attaining age of 50 years of an employee, any of his dependent employed in the Company or at any other place and since long staying away from family and has expressed inability to maintain the other

dependents, then only one of the other eligible dependents shall be taken in employment in the Company, subject to the rules mentioned in Schedule 'J'."

A reading of the said clause indicates that if one of the dependent who has got employment and is staying separately and has shown disinclination to financially support the family, then amongst the dependents one person can be appointed by applying the rules in Annexure 'A', meaning thereby that the appointment can be made of a dependent on compassionate grounds if the dependent who has got employment stays apart from the family and is not financially supporting the family of the deceased employee. In our view, the interpretation sought to be given to the said clause (A) by the authority is not in consonance with the spirit of compassionate appointment. It is trite that the compassionate appointment is granted to a dependent so that the family gets over the financial crisis on account of the death of the employee.

8. In our view, having regard to the facts of the present

case, the said clause has been wrongly applied. No doubt, the petitioner's sister Swati is working with the Public Works Department of the Government of Maharashtra and she is married and staying separately. Assuming that prior to her marriage and prior to the death of the deceased employee Laxman Koli, the said Swati was living with the family. The same would not in our view dis-entitle the Petitioner to be considered for compassionate appointment merely because he had not produced the documentary evidence to show that his sister Swati was residing separately from the family. In our Society it is impossible to expect an unmarried daughter who is working to stay separately from the family. The result of the interpretation of Clause (A) by the Respondent No.2 would be that the daughter who is working has also to live separately from the family so as to show that the family is in need of financial support. In our view interpreting the said Clause (A) in the manner sought to be interpreted by Respondent No.2 would be a disservice to the dependents who are seeking appointment on compassionate basis. In so far as the ground of delay as well

as the ground that the Petitioner's brother is also gainfully employed is concerned, the Petitioner's application is not rejected on the said ground. We therefore would not permit the said Respondent to take the said ground into consideration though we are inclined to remand the matter back to the Respondent No.2 for *denovo* consideration of the application of the Petitioner. In our view, therefore, the impugned order/communication dated 5/11/2015 has to be quashed and set aside and is accordingly quashed and set aside the matter is remitted back to the Respondent No.2 for *denovo* consideration of the Petitioner's application for appointment on compassionate grounds in the light of what we have observed in the instant judgment. The Respondent No.2 to consider the same latest by 31st December, 2018 and inform the Petitioner of its decision.

9. The Petition is allowed to the aforesaid extent.

10. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs.

[M.S. KARNIK, J]

[R.M. SAVANT, J]