

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

WRIT PETITION NO.9169 OF 2014

Shabemairaj Ismail Attar : Petitioner.
Versus
The State of Maharashtra
Through Secretary, Energy Department
Mantralaya, Mumbai and ors. : Respondents.

Mr. M B Deshmukh for the Petitioner.
Mr. Vikas M Mali AGP for the Respondent/State.
Nirav Shah a/w Mr. Anuj Jaiswal i/by Little & Co. for the Respondent No.2 and 3.

**CORAM : R. M. SAVANT &
M. S. KARNIK, JJ.**
DATE : 19th SEPTEMBER 2018

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 04/08/2016 passed by the Respondent No.2 by which order the application filed by the Petitioner for compassionate appointment came to be rejected.

2 The Petitioner herein is the daughter of one Ismail Makbul Attar who was in the employment of the Maharashtra State Electricity Board (for short "MSEB") as a Technician. The said Ismail Makbul Attar expired on 19/01/2006 whilst in service. The said Ismail Makbul Attar has one son Mahammadlsuf Ismail Attar and two daughters Bashira Jahangir Tamboli, who is married and Shabemairaj Ismail Attar i.e. the Petitioner herein. It is an

undisputed that the Petitioner's brother Mahammadlsuf Ismail Attar is in employment of the Maharashtra State Electricity Distribution Company Ltd. (for short "MSEDCL") which is one of the entities which has been formed after the division of the original MSEB. The Petitioner filed an application seeking compassionate appointment on 23/2/2009. The said application was therefore made after a period of 4 years after the death of her father Ismail Makbul Attar. The said application was considered by the Respondent No.2 and by an order dated 04/11/2010 the said application came to be rejected inter-alia on the ground that the Petitioner's brother Mahammadlsuf Ismail Attar was already serving in the MSEDCL. The said order dated 04/11/2010 was taken exception to by filing the above Writ Petition which was filed on 11/08/2014. Hence the above Writ Petition has also been filed almost after a period of 4 years after the said order dated 04/11/2010 came to be passed.

2 The above Writ Petition had come up for admission before a Division Bench of this Court on 13/07/2016. The Division Bench of this Court having regard to the reasons mentioned in the said order dated 04/11/2010 set aside the said order and directed the Respondent No.2 to denovo consider the application made by the Petitioner for compassionate appointment, and in the said process consider the Petitioner's initial application as filed on 23/12/2009. It is on remand that the instant order dated 04/08/2016 came to be passed by the Respondent No.2. The Petitioner has accordingly amended

the Petition to incorporate a challenge to the said order dated 04/08/2016. The said order dated 04/08/2016 can be said to be a detailed order taking into consideration the material which was placed on record by way of compliance of the requirements in respect of an application for compassionate appointment. The said material inter-alia includes the affidavits filed by other dependents of the said Ismail Makbul Attar including brother of the Petitioner Mahammadlsuf Ismail Attar. The brother of the Petitioner, Mahammadlsuf Ismail Attar in his affidavit dated 03/06/2010 has stated that he is living separately and he is not maintaining his mother and the Petitioner i.e. his sister Shabemairaj Ismail Attar.

3 The Respondent No.2 has considered the address mentioned in the said affidavits which unequivocally indicates that the address mentioned in the said affidavits is the same address at which the Petitioner, her mother and brother are residing viz. Sutar, Plot No.4, Kolhapur Road, Sangli. The Respondent No.2 has also adverted to the fact that the employee Ismail Makbul Attat died on 19/01/2006 whereas the application for compassionate appointment was made on 23/12/2009. It is after considering all the aforesaid aspects that the Respondent No.2 as indicated above has rejected the application filed by the Petitioner for compassionate appointment.

4 The learned counsel appearing on behalf of the Petitioner Shri M B

Deshmukh would submit that the brother of the Petitioner Mahammadlsuf Ismail Attar who is in employment of the MESDCL is staying separately from the Petitioner and her mother though in the same house. The learned counsel for the Petitioner would submit that the brother of the Petitioner Mahammadlsuf Ismail Attar has accordingly filed his affidavit to the said fact. The learned counsel would therefore submit that the factum of the brother residing separately has not been taken into consideration by the Respondent No.2 in the process of adjudicating the application filed by the Petitioner for compassionate appointment.

5 Per contra, the learned counsel appearing on behalf of the Respondent No.2 would submit that the time lapse between the death of the employee and the application made by the heir for compassionate appointment assumes importance as it is well settled that the object behind providing compassionate appointment is to get over the financial crisis that the family faces on the death of the breadwinner. It was the submission of the learned counsel for the Respondent No.2 that the application for compassionate appointment therefore has to be necessarily made within a reasonable time frame. The learned counsel sought to place reliance on the judgment of the Apex Court reported in (2009) 12 SCC 112 in the matter of Eastern Coalfields Limited v/s. Anil Badyakar and others in support of the said contention.

6 We have heard the learned counsel for the parties. We have also considered the rival contentions. In our view the Petitioner has not made out any case for interdiction with the order dated 04/08/2016 passed by the Respondent No.2 rejecting the Petitioner's application for compassionate appointment. It is required to be noted that the Petitioner's father expired on 19/01/2006. Thereafter the application for compassionate appointment was made on 23/12/2009. The order rejecting the application dated 04/11/2010 was challenged by filing the instant Petition which was filed on 23/08/2014. Hence at every stage there is a time lapse which has occurred. It is trite as held by the Apex Court in the judgment in *Eastern Coalfields Limited's* case (supra) wherein the Apex Court has referred to its judgments in *Umesh Kumar Nagpal v/s. State of Haryana*, *Jagdish Prasad V.s State of Bihar* and *MMTC Ltd. v/s. Pramod Dei and S Mohan V.s Govt. of Tamil Nadu* that the object behind compassionate appointment is enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over. Applying the said yardstick to the facts in the instant case, we are of the view that the Petitioner is not entitled to the compassionate appointment having regard to the lapse of time which we have adverted to herein above.

7 In so far as the case of the Petitioner that the brother has separated from her and her mother is concerned, the same appears to be ipse dixit of the Petitioner. There is nothing on record to indicate that there has been a separation and that the brother has been living separately pursuant to such separation. The affidavit filed by brother Mahammadlsuf Ismail Attar can therefore be said to have been filed just to support the case of the Petitioner for compassionate appointment as otherwise all of them are staying together at the same address. Hence the case of the Petitioner in so far as separation of the brother is concerned does not inspire confidence. It is required to be noted that the brother is working with the MSEDCL since prior to the death of his father. Having regard to the time lapse between the death of the father and the Petitioner making an application for compassionate appointment and thereafter in filing the above Petition before this Court, the same leads to a reasonable presumption that the family was not facing any financial crisis, and the application has been made by the Petitioner to take a chance. It is well settled that compassionate appointment cannot be given for the asking especially if it is in the nature of public employment. In that view of the matter we do not find any infirmity or illegality in the impugned order passed by the Respondent No.2. The above Writ Petition is accordingly dismissed.

[M.S.KARNIK, J]

[R.M.SAVANT, J]