

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5197 OF 2019

Abdul Wasim Abdul Gafur

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. N.R. Shaikh, Advocate for Petitioner
Mr. A.R. Kale, Assistant Government Pleader for
Respondents/State.

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVAL, JJ.**

DATE : 30th APRIL, 2019

ORAL ORDER:

1. The claim of the petitioner seeking appointment on compassionate ground has been negated by the department. The petitioner filed Original Application before the Maharashtra Administrative Tribunal, Aurangabad. The Tribunal dismissed the Original Application, aggrieved thereby the present Writ Petition.

2. Mr. Shaikh, the learned Counsel for the petitioner submits that the father of the petitioner died on 03.03.2001 while in service with the respondent. On 01.04.2001, the mother of the petitioner made an application to the respondent that the petitioner should be

given an appointment on compassionate ground on attaining the age of majority. The said application was not decided by the department. No communication was made to the petitioner. Thereafter, in the year 2013 and on 06.06.2018, the communication was made rejecting the claim of the petitioner. The learned Counsel submits that the Government Resolution dated 21st September, 2017, more particularly clause 7(b) thereof mandates the employer to intimate all the legal heirs of the deceased about their entitlement to claim appointment on the compassionate ground. The respondents never communicated to the petitioner about his entitlement to get appointment on compassionate ground and now on the ground of delay the claim of the petitioner is negated. The learned Counsel submits that the Government Resolution dated 21st September, 2017 clause 7 (b) is procedural one and respondents are bound by the same. The learned Counsel submits that when a law requires particular thing to be done in a particular manner, it has to be done in that manner.

3. The learned Counsel relies on the Judgment of the Apex Court in a case of ***Canara Bank and Anr. Vs. M. Mahesh Kumar. reported in AIR 2015 SC 2411.***

4. We have heard the learned Assistant Government Pleader also.

5. The object and the purpose of the appointment on compassionate ground is to provide immediate succor to the family of the deceased dying in harness. The father of the petitioner died in March, 2001. It appears that the mother of the petitioner in April, 2001 made an application to the department to the effect that the claim of the petitioner be considered on compassionate appointment upon him attaining the age of majority. The petitioner attained the age of majority in the year 2004. The Tribunal has observed that since the year 2004 till the year 2013, the petitioner had never approached the department at any point of time. The Tribunal also observed that the elder brother of the petitioner is in service and residing at Thane along with his family. All the sisters of the petitioner are married. For almost 10 years after the petitioner attained the age of majority, the petitioner had not taken any steps to file application for appointment on compassionate ground. This fact itself demonstrates that at the relevant time, the petitioner was not interested in service.

6. Be that as it may, 18 years would be too long period to consider the claim for appointment on compassionate ground. The same would defeat the very object and purpose of the scheme for appointment on compassionate ground.

7. It is trite that claim for appointment on compassionate

ground is not right but however is governed by executive instructions and is depends upon the facts and circumstances of each case. The Judgment in the case of Canara Bank would not be any avail to the petitioner. In said case, the Apex Court considered that the fact that the claimant's family is getting family pension and had obtained terminal benefits would not be relevant. The Supreme Court had directed the High Court to reconsider the claim of the petitioner. The factual matrix of the present case does not entitle the petitioner to the relief for appointment on compassionate ground.

8. In light of the above, the Writ Petition is disposed of. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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