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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11861 OF 2015

Mr. Kedar Dilip Patkar)
Age 19 years, Occupation Nil,)
Residing at Sujalam Nagar,)
Phase 2, Rasika Apartment,)
Block No.204, Pimpalbhat)
Taluka Alibag District Raigad) Petitioner.

Versus

1] Hon'ble High Court Bombay)
Through the Registrar,)
(Personnel) High Court (Appellate Side))
Bombay.)
)
2] The Registrar,)
District Court, Raigad at Alibag)
)
3] The State of Maharashtra)
Through Law and Judiciary)Respondents

Mr. Rohit D. Joshi, Advocate for the Petitioner.
Mr. A.B. Borkar, Advocate for Respondent Nos. 1 and 2.
Mr. Y.S. Khochare, AGP for Respondent No.3.

CORAM: B. R. GAVAI &
N. J. JAMADAR, JJ.

DATE: 8th January, 2019

ORAL JUDGMENT: (Per B.R. Gavai, J.)

1] Rule. Rule is made returnable forthwith. Respondents waive service. Heard by consent of parties.

2] This Petition arises out of peculiar facts. Petitioner's father was working in District Court at Raigad. Petitioner's father died while in service on 22nd June 2011. Petitioner, thereafter, made an application for appointment on compassionate ground. However, the same was not considered, since he was yet to attain majority. On attaining majority, Petitioner again applied for appointment on compassionate ground on 30/06/2014.

3] The learned Principal District Judge, vide communication dated 26/03/2015, after scrutinizing the papers, recommended the case of the Petitioner for being appointed on compassionate ground. However, the Petitioner was informed by the Registry of District Court, Raigad that, in view of clause 7 of the Bombay High Court Revised Guidelines for Appointment on Compassionate Ground, 2007, Petitioner is not entitled to appointment on compassionate ground. Hence, he has approached this Court.

4] An affidavit in reply is filed on behalf of the High Court. It is

stated that the Petitioner is not entitled to appointment on compassionate ground since he was receiving an amount of Rs 19,944/- including D.A. @ Rs 107%, which was higher than the total emolument i.e. 17,174/- p.m. of Group "C" employee of the lowest rank.

5] It is to be seen that, in the reply itself, it is stated by Respondent No.1, that after death of Petitioner's father, Petitioner and his sister were there in the family. It is stated that as per Rules, unmarried daughter was entitled to family pension, until she attains the age of twenty-four years or until she gets married. It appears that it is the case of Respondent No.1 that, after marriage of the Petitioner's sister on 29/11/2012, it was the Petitioner, who was alone receiving the family pension since 30/11/2012. However, it is to be noted that as per Rules, after the Petitioner attained majority i.e. on 30/6/2014, he was not entitled to family pension. As such, on the date on which the Petitioner made an application for appointment on compassionate ground, he was not having any other income. It is to be noted that Petitioner's mother died prior to death of his father.

6] In that view of the matter, we find that rejection of the Petitioner's application for appointment on compassionate ground, is on erroneous premise. When the Petitioner attained the age of majority, as per relevant rules, he was not entitled to family pension. If family pension is thereafter paid for sometime erroneously, Petitioner cannot be blamed for the same. It is nobody's case that the Petitioner fraudulently obtained the said amount.

7] We therefore find that the Petition deserves to be allowed. The impugned order is quashed and set aside. Respondent No. 2 is directed to forthwith give appointment to the Petitioner on compassionate ground on a suitable post. We further clarify that in the event if any amount is erroneously paid to the Petitioner towards family pension after he attained majority, the same shall be adjusted from the salary that the Petitioner would be entitled to.

8] Rule is made absolute in the aforesaid terms.

(N.J. JAMADAR, J.)

(B. R. GAVAI, J.)