

2. Facts giving rise to this petition are that deceased Deepak Hiwrale was the husband of petitioner No. 1 and father of

petitioner No. 2. he died in harness as Police Head Constable on 16th September, 2004. Thereafter, petitioner No. 1 made an application to respondent No. 2 for employment on compassionate ground in Class IV/Group D category. The name of petitioner No. 1 was included in the waiting list of the eligible candidates to be appointed on compassionate ground. However, she was not offered any job as according to respondent No. 2, petitioner No. 1 has passed 7th standard, on account of which, she did not fulfill the qualifications for the appointment on Class III/Group C post.

3. Petitioners further contend that petitioner No. 2 was born on 10th May, 1992 and passed 10th standard examination in March 2010. His date of birth was wrongly entered as 10th May, 1995 in his Secondary School Certificate issued by the Maharashtra State Board of Secondary and Higher Secondary Education, Pune. He had made correspondence with the Education Officer for the correction of his date of birth but the Education Officer did not consider his application favourably. Therefore, he had to file Writ Petition No. 532/2013. In view of the directions of this Court in Writ Petition No. 532/2013, the date of birth of petitioner No. 2 was corrected as 10th May, 1992. According to petitioners, thereafter petitioner No. 2 made

an application to respondent No. 2 for giving employment to him instead of petitioner No. 1. This application was made on 16th January, 2015. It is the contention of petitioners that petitioners sought replacement of name of petitioner No. 2 against petitioner No. 1. This request was turned down by respondent No. 2 by communication dated 27th September, 2018. This communication was assailed before the learned Tribunal by preferring Original Application No. 928/2018. By the order dated 28th November, 2019, the learned Tribunal rejected the application on the ground that change of name is not permissible. This order is impugned in this writ petition.

4. We have heard Shri A.S. Deshmukh, learned counsel for the petitioners and Shri Karlekar, learned AGP for both the respondents.

5. Learned counsel Shri Deshmukh submitted with vehemence that at the time of death of deceased Deepak Hiwrale, petitioner No. 1 was 30 years old and petitioner No. 2 was 12 years of age. Since petitioner No. 2 was minor, petitioner No. 1 had made an application to respondent No. 2 to include her name for the

appointment on compassionate ground. He further submitted that petitioner No. 2 had to get his date of birth corrected as 10th May, 1992 from 10th May, 1995 by preferring aforesaid writ petition. His date of birth was corrected vide order of this Court dated 19th September, 2013 and thereafter, petitioner No. 2 made application for change of name. He submitted that the Honourable Supreme Court and this Court also time and again have held that change of name is permissible. Despite this, the Tribunal rejected the application of petitioners. He placed reliance on cases in the matter of State of Himachal Pradesh and another Vs. Shashi Kumar reported in **2019(3) SCC 653**, Local Administration Department and another Vs. M. Selvanayagam @ Kumaravelu reported in **2011(13) SCC 42** and State of Jammu and Kashmir and another Vs. Sajad Ahmed Mir reported in **2006(5) SCC 766**.

6. Learned AGP opposed the application.

7. It is not in dispute that deceased Deepak Hiwrale was the husband of petitioner No. 1 and father of petitioner No. 2. Deceased Deepak died in harness on 16th September, 2004. At the time of death of Deepak, petitioner No. 2 was 12 years old. Petitioner No. 2

made application for correction of his date of birth which was rejected by the Education Officer. Petitioner No. 2 had to file Writ Petition No. 532/2013 which was allowed on 19th September, 2013. He then made application to the Board of Secondary School Certificate and the Board informed him on 17th January, 2014, about correction of date of birth. Respondent No. 2 rejected the application of petitioner No. 2 on the ground that change of name is not permissible.

7. In the case of MGB Gramin Bank Vs. Chakrawarti Singh reported in AIR 2013 SC 3356, it has been held that the claim for appointment on compassionate ground is based on the premise that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule, public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another

source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis and not to confer a status on the family.

8. It is, thus, trite that appointment on compassionate ground is not a absolute/unfettered right of dependents/heirs of the deceased employee who died while in service. Normally, every appointment of the office is to be made strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution of India. An exception of providing employment on compassionate ground has been carved out in order to remove the financial constraints on the bereaved family which has lost its bread earner.

9. It is true that position at the time of making application for compassionate appointment is to be considered and subsequent resolutions do not apply. It is also true that the Honourable Supreme Court has allowed change of name of an heir of the deceased employee with another heir. The aspect on which compassionate appointments are to be made is financial condition of

the family of the deceased employee and if, the competent authority satisfies that without providing employment the family would not be able to meet the crisis, then a job is to be offered to the eligible member of the family. Moreso, the person claiming such appointment must possess required eligibility for the post [MGB Gramin Bank (supra)]. In the case of Umesh Kumar Nagpal vs. State of Haryana and others reported in **(1994) 4 SCC 138**, the Honourable Supreme Court has held thus :-

“The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object

being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned.

It is further held in paragraph No. 6 that the consideration for such employment is not a vested right which can be exercised at any time in future.

10. Another aspect which needs consideration is whether the heirs of the employee were able to tide over the impact of death. In the case of Local Administration Department and another vs. M. Selvanayagam @ Kumaravelu (supra) it has been observed thus :-

9. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on July 2, 1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his fathers death. In such a case, the appointment cannot be said to sub-serve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service. In the facts of the case, the municipal authorities were clearly right in holding that whit whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the respondent did not come under the scheme of compassionate appointments.

11. Keeping these principles in mind, it will have to be

ascertained whether petitioner No. 2 is entitled to the employment on compassionate ground. In the case at hand, admittedly, Deepak Hiwrale passed away on 16th September, 2004. Petitioner No. 1 was informed in the year 2019 that her name was struck off from the waiting list as she had attained the age of 45 years. This communication was made to her on 12th June, 2019. Original Application No. 928/2018 was preferred to the Tribunal. This application was made in the year 2018. Thus, the family survived for a period of 15 years after the death of deceased Deepak Hiwrale. In the case of Local Administration Department (supra), the facts were almost similar. In that case, at the time of death of the employee, his son was 11 years old and on attaining majority he staked his claim for compassionate appointment. The Honourable Supreme Court has held thus :-

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12. When this legal position is applied to the facts of the present case, what emerges is that after death of Deepak Hiwrale, the family survived for 14 years and then application was made to the Tribunal as change of name was not favourably considered by respondent No. 2. This clearly shows that the family could survive the impact of death. In such a case, appointment on compassionate ground is not a necessity. The learned Tribunal was right in dismissing the application. Hence, we do not see any reason to interfere with the order of the learned Tribunal. In the case of State of Maharashtra and others vs. Pravin in Civil Appeal No. 1385/2017 decided on 3rd February, 2017, it has been held that application for appointment on compassionate ground cannot be kept pending for

indefinite period and if no vacancy is available within a reasonable time, the claim cannot be thereafter entertained. In the case at hand also, vacancy was not available for a considerable period. For this reason also, we do not deem it appropriate to interfere with the order passed by the learned Tribunal. Petition is, therefore, devoid of any substance. Hence it is dismissed.

(M. G. SEWLIKAR)
Judge

(S. V. GANGAPURWALA)
Judge

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