

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5860 OF 2015

Sou. Deepamala Yuvraj Yadav.

...Petitioner.

Versus

The Executive Engineer,
Maharashtra State Electricity Board
and Others.

..Respondents.

Ms. Kalpana R. Trivedi for the petitioner.

Mr. Rakesh I. Singh i/b M. V. Kini for Respondent No. 1 and 2.

Mr. S. B. Kalel, AGP for the Respondent-State.

CORAM: PRASANNA B. VARALE &
N. R. BORKAR, JJ.

Date : **September 8, 2021.**

P. C. :

1. Heard learned counsel Ms. Kalpana Trivedi for the petitioner and learned counsel Mr. Rakesh Singh for respondent nos.1 and 2.

2. By this petition, the Petitioner is approaching this Court with the following principal prayers :

“(b) To hold and declare that the inaction of the respondent no.1 in not considering the proposal of the Petitioner for the alleged reason that the Petitioner is the married daughter of deceased Pandurang as illegal and bad-in-law;

(c) To direct the respondents to forthwith appoint petitioner to the post in question i.e., w.e.f. 19/06/2003 along with the back wages and other consequential benefits.”

3. It is vehemently submitted by the learned counsel for the petitioner that the Petitioner had approached the respondent authorities on attaining the majority seeking appointment on compassionate ground initially and subsequently, post her marriage, again for providing her appointment on compassionate ground. It is submitted by the learned counsel for the petitioner that in spite of various communications to the respondent authorities, the respondent authorities failed to consider her applications and resultantly the claim of the petitioner is turned down.

. *Per contra*, the learned counsel appearing for the respondent authorities by inviting our attention to various documents placed on record submitted that on receipt of applications from the petitioner, the respondent authorities had promptly replied to the petitioner, initially calling upon certain documents as those documents were not submitted with the application. Subsequently, it was found that the Petitioner is not entitled for an appointment on compassionate ground in view of the rules framed by the respondent authorities for providing the compassionate appointments. Learned counsel for the respondent authorities also submitted that the petitioner had not approached this Court with disclosure of all necessary facts. It is also submitted by the learned counsel for the respondent authorities that no error is committed by the respondent authorities in rejecting the claim of

petitioner which is firstly time barred and secondly not complying with the rules framed by the respondent authorities.

4. With the assistance of the learned counsel, we have gone through the material placed on record. It reveals from the perusal of material that father of the petitioner – late Pandurang Ganapati Gaikwad was working as Telephone Operator in Maharashtra State Electricity Board, Tarabai Park, Kolhapur. While in service, Pandurang Gaikwad expired on 10th February 1991. The perusal of documents further shows that an application was submitted at the instance of petitioner – Kumari Deepamala Gaikwad on 20th February 2006. It was immediately informed to the petitioner by the communication dated 25th April 2006 that there are certain deficiencies in the submission of documents and as soon as these deficiencies are removed, the application of Petitioner would be forwarded to the higher officers. Then there is a series of communications exchanged between the parties.

. Then in the year 2012, a fresh application was submitted by the Petitioner (subsequent to her marriage) stating that she is the elder sister and though she is married daughter, the responsibility of mother is on her shoulders and a request is made for providing her compassionate appointment. The perusal of documents further shows that the mother

of petitioner Smt. Mahadevi Pandurang Gaikwad had approached this Court with a prayer to decide and dispose of her proposal pending with the authority for pension. Vide the order of this Court dated 7th February 2013, the division bench of this Court directed the concerned authority to dispose of the proposal of the mother of petitioner as expeditiously as possible and within the period of three months from the date of order. Learned counsel for both the sides admit that the mother of petitioner is receiving pension and this fact is also referred to in the order of the division bench dated 31st March 2021 in paragraph 5.

5. Be that as it may, the perusal of documents further shows that respondent no.1 by a communication dated 21st August 2013 forwarded the proposal to the higher authorities for consideration of the claim of the Petitioner which was admittedly belated claim. It is stated in the communication that as the Executive Director is the competent authority to take a decision for condonation of delay caused in submitting the application, the proposal is forwarded to the competent authority. The documents placed on record at Annexure-9, i.e., the communication dated 3rd August 2016 shows that the proposal submitted to the Executive Director was turned down and the Petitioner was also informed the said fact by an independent communication. Thus, the perusal of documents clearly shows that after the death of employee

– Pandurang Gaikwad in the year 1991, the claim for compassionate appointment was firstly submitted in the year 2006, i.e., nearly after the lapse of period of 15 years.

6. At this stage, learned counsel for the Petitioner made an attempt to submit before us that the Petitioner submitted her application belatedly only by a period of 5 months and that is a fact admitted by the Respondents. To support this submission, learned counsel heavily relied on the document at Exhibit-B. Perusal of this document clearly shows that it is a communication calling upon the Petitioner for deciding the claim for monthly subsistence allowance and the Petitioner is called upon to attend the interview with certain documents. By no stretch of imagination, a claim which is made before the authority for monthly subsistence allowance can be equated with a claim for compassionate appointment. Thus, what remains on record is the first application of the Petitioner submitted to the authority post her marriage on 18th October 2012.

7. On the backdrop of these facts, the Respondent authorities committed no error in rejecting the claim of the Petitioner. We may also refer to the relevant rule, i.e., Rule no.5 of *the Maharashtra Rajya Vidhyut Mandal Vargikaran Va Seva Pravesha Viniyam, 1961*. As per

the said rule, the time limit prescribed for submitting an application for appointment on compassionate ground is 5 years for the dependent of employee and if the wards of such employee are minor at the time of death of employee, then they may submit an application for seeking compassionate appointment within the period of 10 years from the date of attaining majority. Now, it is stated in the affidavit-in-reply filed on behalf of the respondents that as per the Petitioner's school leaving certificate, her date of birth is 21st January 1990. She was 11 years old when her father expired in the year 1991 and she attained majority in the year 1998. Therefore, as per the administrative circular and the rules, the Petitioner ought to have applied for the services before 21st January 2003. At the cost of repetition, we again state that the application submitted to the authorities was on 18th October 2012. Thus it was after the petitioner had attained the majority in the year 1998.

8. Learned counsel for the respondent authorities by inviting our attention to the affidavit-in-reply submitted that all the necessary facts are not disclosed in the writ petition. It is stated in the reply that initially mother of the petitioner, Smt. Mahadevi Pandurang Gaikwad submitted an application seeking job and then by letter / communication dated 31st April 2010, she sought for cancellation of her application and took back the relevant documents.

9. It may not be out of place to state here that while considering the claims for compassionate appointment, the Hon'ble Apex Court in CCE & Customs v. Prabhat Singh [(2012) 13 SCC 412] was pleased to observe that the object of compassionate appointment is to provide succor and solace to the distressed family on account of the death of earning member of the family and compassionate appointment of a member in the family provides a succor and relief to the family and this object can be achieved only when the compassionate appointment is sought for and provided in a reasonable period; if such a claim is made after the lapse of period of 20 years or so, the whole object of providing the appointment on compassionate ground is frustrated. In this regard, the observations of the Apex Court in paragraphs 15 and 16 of the above decision will be worthwhile to reproduce, which read thus :

"15. The very object of making provision for appointment on compassionate ground, is to provide succor to a family dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole bread winner. Delay in seeking such a claim, is an ante thesis, for the purpose for which compassionate appointment was conceived. Delay in raising such a claim, is contradictory to the object sought to be achieved. The instant controversy reveals that even though Vijay Bahadur Singh, the father of the applicant (Prabhat Singh) seeking appointment on compassionate ground had died on 2.3.1996, Prabhat Singh sought judicial redress, for the first time, by approaching the CAT-Allahabad Bench in 2005. By such time, there was no

surviving right for appointment on compassionate ground under the OM dated 5.5.2003. As already noticed above, appointment on compassionate ground under the OM dated 5.5.2003 is permissible within three years of the death of the bread winner in harness. By now, sixteen years have passed by, and as such, there can be no surviving claim for compassionate appointment.

16. *Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the gift of compassionate appointment, to all those who seek a court's intervention. Courts and Tribunals must understand, that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverish family. Discretion is therefore ruled out. So are, misplaced sympathy and compassion."*

10. Considering all these facts, we are of the opinion that the petition is wholly devoid of merits and deserves to be dismissed and the same is accordingly dismissed.

[N R. Borkar, J.]

[Prasanna B. Varale, J.]