

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No. 7255 of 2018

Nikhil S/o Digambar Patil

.... Petitioner

// VERSUS //

The State of Maharashtra,
Through its Secretary, Department of
General Administration, Mantralaya,
Mumbai-32 and others

... Respondents

Shri R.D. Karode, Advocate for the Petitioner

Shri D.P. Thakare, AGP for the Respondent Nos.1 and 2 - State

Smt. Vaishali Khadekar, Advocate for Respondent No. 3

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 11 FEBRUARY 2021

P.C.:

The Petitioner is seeking a direction to the Respondent-Zilla Parishad, Buldhana to appoint the Petitioner on the compassionate basis in view of the death of his father who was working with the Zilla Parishad.

2. The Petitioner's father was appointed as Primary Teacher. On 5 April 2010 while on duty, Petitioner's father succumbed to a heart attack. The Petitioner and his mother applied on 26 February 2013 seeking compassionate appointment based on the Government Resolution dated 20 May 2015 issued by the State Government.

3. The Block Development Officer, Panchayat Samiti, Motala forwarded the Petitioner's application to the Respondent No.3 - Chief Executive Officer, Zilla Parishad, Buldhana. Thereafter on 24 January 2018, the Respondent No.3-Chief Executive Officer informed the Petitioner that since there is a delay of three years, nine months and twenty-six days in applying, the Petitioner would not be entitled to the appointment on a compassionate basis. Being aggrieved, the Petitioner has approached this Court.

4. We have heard the learned Counsel for the parties.

5. By communication dated 24 January 2018 Petitioner was informed that as per the Government Resolution dated 20 May 2015 if the application is made beyond the period of one year, prescribed till three years, the power to condone such delay is with the concerned Head of the Department and the Divisional Commissioner by letter dated 4 January 2018 has not condoned such delay. The Petitioner has not sought to set aside the order dated 4 January 2018, and without prayer for setting aside this order, he is seeking appointment on a compassionate basis.

6. The learned Counsel for the Petitioner sought to contend that the Petitioner ought to have been informed within fifteen days that the Petitioner has a right to seek compassionate appointment and in view of this position, the delay in making an application cannot be held against the Petitioner.

7. The object of a compassionate appointment is to help the deceased employee's family face the calamity of losing bread-winner of the family. The appointments on a compassionate basis are an exception to the general rule of appointment to a public post through the open procedure with public participation. Therefore, the object of the compassionate appointment cannot be lost sight of when the Petitioner invokes the Writ Jurisdiction of this Court. Even assuming that the Petitioner was not informed within fifteen days as sought to be contended, the question will remain, as to what was the position from the death of the father of the Petitioner till filing of the application, if the Petitioner seeks condonation of this delay. Even assuming that an applicant was not informed within fifteen days, the application is made belatedly cannot be automatically granted condoning the delay if the family did not require any support. This factor will have to be considered while exercising writ jurisdiction.

8. In this context, we called upon the learned counsel for the Petitioner to demonstrate as to what was the position between three years, nine months and twenty-six days. In the affidavits filed by the Petitioner, there are no details as to how the Petitioner and his family earned their

living. The affidavits filed in support of the application also do not contain these details. The reliance of the learned counsel for the Petitioner on the report submitted is misplaced as this report only refers to the affidavits which do not contain any details. Even in the Petition, there are no specific averments about the delay of three years, nine months and twenty days. In light of this position if the Respondent No.2 - the Divisional Commissioner has not condoned the delay, considered the totality of the circumstance the order cannot be faulted with, Even otherwise, the petitioner has also not challenged the communication issued by the Divisional Commissioner dated 4 January 2018.

9. In these circumstances, no relief can be granted in this Petition. The Petition is rejected.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]