

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

32 WRIT PETITION NO. 684 OF 2021

AMOL PRAKASH SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Sandip R Sapkal
AGP for Respondent Nos. 1 : Ms.R.P. Gaur
Advocate for Respondent No 2 : Mr. Pratik P. Kothari

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CORAM : RAVINDRA V. GHUGE &
S.G.DIGE, JJ.

DATE : 25.04.2022

P.C. :

1. By this petition, filed on 11-09-2020, the petitioner has put-forth prayer clauses "B" and "C" as under:-

"B] To quash and set aside the order dated 20.01.2014 passed by the Respondent no. 2 thereby rejecting the claim of the petitioner for seeking appointment on compassionate grounds by issuing appropriate writ, order or direction in the nature of writ or as the case may be.

C] To direct the Respondent no. 2 to appoint the petitioner on compassionate

grounds on any post in the place of his father who died during serving with the respondent No.2, by issuing appropriate writ, order or direction in the nature of writ or as the case may be.”

2. This is a peculiar case. The application for compassionate appointment of an eligible candidate i.e. the petitioner, has been erroneously rejected by the Zilla Parishad on the ground that the application is beyond one year from the death of the bread earner, thereby compelling his younger brother to move an application for compassionate appointment, which is kept pending by the Zilla Parishad.

3. The father of the petitioner, namely, Prakash died on 16-10-2012, while in service. He was a Junior Accountant Officer in the Panchayat Samiti Office, Vaijapur. On the 4th day, 20-10-2012, the petitioner, Amol, born on 23-02-1990, filed an application for compassionate appointment. On 20-01-2014, the Zilla Parishad rejected the application on the ground that it was filed beyond one year. Surprisingly, and purportedly on the advise given by some Zilla Parishad Official, the brother of the petitioner, namely, Vishal, moved

an application on 03-01-2014. This was prior to the application of Amol getting rejected on 20-01-2014. The said application of Vishal is still pending.

4. The learned Advocate for the petitioner submits that after the petitioner realised that his application was illegally rejected, he has approached this Court on 11-09-2020. In the meanwhile, his brother Vishal has applied on 11-02-2022 along with affidavit of even date executed on Rs.100/- non judicial stamp paper, declaring that he does not desire to pursue his application as his elder brother Amol is eligible. Consequentially, Amol moved an application on 11-02-2022 for reconsideration of his application dated 20-10-2012.

5. The learned Advocate representing the Zilla Parishad opposes the contention of the petitioner - Amol though by conceding that Amol's application was indeed within limitation. Out of some misunderstanding on the part of the administration, the said application got rejected. Nobody had counselled Amol to call upon younger brother Vishal to file his application in place of the application of

Amol. Vishal voluntarily filed the application and voluntarily desires to withdraw the application. The learned Advocate relies upon the judgment delivered by the Honourable Apex Court in the case of *the State of Jammu and Kashmir Versus Sajad Ahmed Mir (AIR 2006 SC 2743)* and the judgment delivered by the learned Division Bench of this Court in the matter of *Shubham Versus Nagpur Improvement Trust (MANU/MH/1230/2020)* to buttress his contention that this petition suffers from delay and laches.

6. It is well settled that though compassionate appointment is not a vested right, the cases pertaining to the compassionate appointments have to be dealt with, with sensitivity and by adopting a humane approach. A pedantic view ought not to be taken in such matters.

7. It is undisputed that Amol had preferred his application within four days of the demise of his father when he was 22 years and eight months old. It is indeed unfortunate that this application is rejected under the signature of the Chief Executive Officer on 20-01-2014 for the reason that his application was beyond one year. Apparently, the then Chief

Executive Officer failed to apply his mind to the facts of this case.

8. It is a matter of dispute as to whether Vishal was advised by any Zilla Parishad employee-official to file an application in place of his brother Amol. Nevertheless, the said application was neither maintainable, nor could have been entertained. The same is pending for last eight years and no decision has been taken by the Zilla Parishad on the said application, which is now withdrawn by Vishal.

9. It is apparent that the petitioner Amol did not approach this Court under the impression that if not him, atleast his brother would get compassionate appointment. After realizing that the application of his brother Vishal is kept pending for six years that he has approached this Court on 18-09-2020. Nodoubt, there is a delay on the part of the petitioner in assailing the order on his application. However, this delay does not appear to be deliberate or / with an ulterior motive, inasmuch as, laches cannot be attributed to the conduct of the petitioner. Infact, the petitioner finds himself in a peculiar situation.

10. In these circumstances, the view taken by the Honourable Apex Court in the case of *Sajad Ahmed Mir* (Supra) would not apply to this case as the application in the said case was filed more than four years after the death of the bread earner and the claimant had approached the Court after 15 years from the date of the demise of his father. In the case of *Shubham* (Supra), the widow had filed an application after her husband died, at the age of 41 years and she is held to be age barred. Therefore, along with her son, she approached the High Court after eight years. These facts also differ from the case in hand, wherein an application of Amol was illegally rejected and his brother Vishal made an application in his place, which is still pending.

11. Considering the above and in view of the declaration by Vishal on affidavit that he does not desire to pursue his application, we are of the view that the impugned order dated 20-01-2014 rejecting the application of the petitioner Amol was unjustified and illegal.

12. This petition is, therefore, allowed. The impugned order dated 20-01-2014 stands quashed and set aside.

13. The application of Amol dated 20-10-2012 seeking compassionate appointment stands allowed to the extent of enlisting the name of the petitioner - Amol in the list of eligible candidates, by the Zilla Parishad, forthwith. His seniority in the eligible candidates' list, will date back to the date of the application which is 20-10-2012. Considering his qualifications of being MCA, MS-CIT, the Zilla Parishad would consider his claim in the light of the application dated 20-10-2012 and if there is a vacancy on which he could be accommodated on the basis of his qualifications, he shall be issued with an appointment order.

(S.G.DIGE, J.)

(RAVINDRA V. GHUGE, J.)

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