

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8187 OF 2022

Vivek s/o Prakash Garge,
Age-23 years, Occu-Nil,
C/o Shri Madhav Kalu Patil,
R/o Gut No.52, Plot No.26,
Gadgebaba Nagar, Bhadgaon Road,
Pachora, Tq. Pachora,
District : Jalgaon

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through it's Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai - 32.

2. The Registrar (Personnel),
High Court Appellate Side,
Mumbai.

3. The Registrar,
District and Sessions Court,
Jalgaon

-- RESPONDENTS

Mr.L.V.Sangit, Advocate for the petitioner.
Mr.P.S.Patil, AGP for respondent/State.
Mr.C.K.Shinde, Advocate for respondent Nos. 2 and 3.

(CORAM : RAVINDRA V. GHUGE AND
ARUN R. PEDNEKER, JJ.)

DATE : OCTOBER 06, 2022

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner has put forth prayer clause A & B as under :-

"A. For a writ of certiorari order or direction in the nature of certiorari, calling for the record and proceedings of impugned communication dated 07.06.2022 issued by respondent No.3 (Exhibit C) may kindly be called and after examining the legality, validity and propriety thereof, the impugned communication dated 07.06.2022 issued by respondent No.3 (Exhibit C) may kindly be quashed and set aside by allowing the application in toto.

B. Clause-7(a) and Clause 10 of the Bombay High Court Revised Guidelines for appointment on compassionate ground, 2007 may kindly be declared violative of Article 14 of the Constitution of India."

The petitioner does not press prayer clause 'B'.

3. Having considered the strenuous submissions of the learned Advocates for the respective sides on 13.09.2022, 16.09.2022, 03.10.2022 and today, we find that certain dates and events need mention as under :-

[a] The petitioner's father Prakash was in service at the Yawal Court as a Bailiff.

[b] He was a permanent employee.

[c] He died due to a heart attack on 05.08.2008 when he was in service.

[d] The petitioner was around 9 years of age at the relevant time, his date of birth being 02.09.1999.

[e] The widow i.e. the mother of the petitioner, made an application for compassionate appointment on 16.08.2008.

[f] Her application was rejected on 15.07.2009. She had taken education only upto the 1st standard.

[g] The petitioner attained adulthood on 02.09.2017 (18 years of age).

[h] He moved his application on 12/10/2017 seeking compassionate appointment, which was rejected on 10.05.2019, after 19 months.

[i] He preferred a review application on 03.01.2020. The review application was rejected on 31.05.2022, after 17 months.

4. In the above backdrop, the petitioner has relied upon the Bombay High Court Revised Guidelines for appointment on Compassionate Ground, 2007, wherein Rule 7 reads thus :-

"7. Eligibility :-

The Scheme shall apply only if :-

[a] The family deserves immediate assistance for relief from financial destitution; and

[b] Applicant for compassionate appointment is eligible and suitable for the post in all respect under the provisions of relevant Recruitment Rules.

[c] The total monthly income of such family is less than the total emoluments of Group "C" employee of the lowest rank."

5. The above stated guidelines were revised vide the Bombay High Court Revised Guidelines for appointment on Compassionate Ground, 2019. The amended Rule 7 with regard to Eligibility reads as under :-

"7. Eligibility :-

The Scheme shall apply only if :-

[a] The family deserves immediate assistance for relief from financial destitution ; however, an application for compassionate appointment should not be rejected merely on the ground that the family of the employee has received the benefits under the various welfare schemes. While considering the request for appointment on compassionate ground, a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes) and all other relevant factors, such as, presence of an earning member,

size of the family, age of the children and the essential needs of the family etc.

[b] Applicant for compassionate appointment is eligible and suitable for the post in all respect under the provisions of relevant Recruitment Rules."

(Emphasis supplied)

6. The amended Rule 10 which prescribes limitation for making a request for compassionate appointment, reads as under :-

"Application for appointment on compassionate ground shall be made within one year of death of the employee in harness. However, in a suitable case, the Chief Justice may consider request for compassionate appointment made after 1 year upto 2 years after the death of the employee.

Provided that if the eligible dependent family member of the deceased employee includes son or daughter, the time for making application for compassionate appointment would be one year from the date, the eldest of the children of the employee attains the age of majority, or , at the discretion of the family , the eldest son of the employee attaining the age of majority."

[Emphasis supplied]

7. The learned Advocate representing respondent Nos. 2 and 3 has vehemently put forth 2 fold submissions. Firstly, that there was no provision under the 2007 guidelines which enables a dependent, who was otherwise eligible for compassionate appointment, to make an

application for compassionate appointment, after he became 18 years of age. Secondly, the revised Rules of 2019 were introduced on 13.09.2019 and, hence, the petitioner cannot rely on the Rules, which have been amended subsequently.

8. There is no dispute that the widow receives pension @ Rs.4585/- (Rs.Four thousand five hundred eighty five only) per month. Presently, the petitioner has an unmarried sister. The petitioner and his unmarried sister are living alongwith the widow, together. Rule 7(c) of the 2007 Guidelines, holds a family deserving immediate assistance for relief from financial destitution, eligible and applies the scheme of compassionate appointment to such a family under clause 'C', i.e. whose total monthly income is less than the total emolument of group 'C' employee of the lowest rank. At the time the petitioner became eligible on completion of 18 years of age, the widow was receiving pension @ 4585/- per month, whereas the total emolument payable to a family of a group 'C' employee of the lowest rank was @ Rs.5200/- to Rs.19900/- p.m.

9. In this backdrop, the petitioner's claim is supported by the

judgment delivered by this Court (Coram : Dr.Manjula Chellur, CJ. and R.M.Borde, J.) at Aurangabad on 29.06.2017 in WP No.2710/2016 (Tushar Upendra Joshi Vs. The State of Maharashtra and others), wherein this Court held in paragraph Nos. 3 and 4 as under :-

"3. In order to consider an appointment under the quota of compassionate ground, one has to first see whether the circumstances, which the petitioner had faced, continue to be the same after five years from the date of death of his parent and whether there is compliance not only of the procedure but the criterion for getting such employment. In terms of procedure, one has to apply for employment or appointment on compassionate ground within one year from the date of death of the parent and one more year relaxation is provided if under exceptional circumstances, the Chief Justice approves the relaxation of period of one year thereby maximum period within which the application could be considered is two years from the date of death.

4. In the present case, apparently the petitioner was not eligible for such employment on the date of death of the deceased since he was only 11 years and even if he were to make application, he would have been only 13 years with the maximum time relaxation provided in terms of the procedure. No doubt, there is no procedure contemplated so far as minor children of the employees, who die in harness. The application by the petitioner is made three years after attaining the age of majority. By interpreting Rules 8 and 10 of the Rules applicable, one could conclude that from the date of entitlement to apply for such appointment, maximum time within which the application could be

given would be two years. Apparently, the application submitted was beyond two years. therefore, in terms of procedure and the Rules applicable, the application was made beyond the time prescribed, and according to us, it is correct."

[Emphasis supplied]

10. It is thus held that at the relevant time, when the case in Tushar Upendra (supra) was decided, there was no procedure contemplated for a minor making an application after becoming an adult. This Court ruled, interpreting Rules 8 and 10, that one could conclude that the maximum time, from the date of entitlement (18 years) to apply for compassionate appointment by filing the application, would be 2 years. In Tushar Upendra case (supra), the application was submitted beyond 2 years. In the case in hand, the petitioner had filed his application within 41 days after he became an adult. We, therefore, negates the first submission of the learned Advocate for respondent Nos. 2 and 3 and hold that the petitioner is entitled for compassionate employment.

11. The learned Advocate for respondent Nos. 2 and 3, in his second submission has contended that the amended Rules would not apply to the case of the petitioner since they were amended after his application was rejected. It is undisputed that the review application filed by the

petitioner was after the 2019 Rules were introduced and the same was rejected on 31.05.2022.

12. The petitioner's application was rejected on 10.05.2019 which is around 4 months prior to the 2019 Guidelines being effected on 13.09.2022. When his review application was filed, the said guidelines were in force. Nevertheless, while exercising our writ jurisdiction under Article 226 to ensure that justice is done, we can take a view that the amended Rules are applicable to every case, which was pending before the Authorities. So also, note I under Rule 8 (B) indicates that "age eligibility shall be determined with reference to the date of the application and not from the date of appointment." On the day, the 2019 Rules were introduced, the petitioner's application was rejected, though wrongly, he had moved a review application, which was being considered by the Authorities and in any case, the amended Rules do grant one year limitation for the petitioner to make an application for compassionate appointment after he has attained 18 years of age, U/R 8(B).

13. In the light of the above, from whichever angle that the case of

the petitioner can be looked at, either in the light of the 2007 Rules and the judgment delivered in Tushar Upendra case (supra), or the 2019 Rules introduced on 03.09.2019, he can be held eligible for compassionate appointment.

14. Recently, on 13.09.2022, the Hon'ble Supreme Court has delivered a judgment in **Fertilizers and Chemicals Travancore Ltd., and others Vs. Anusree K.B. Civil Appeal No.6958 of 2022**. The claim of the candidate was rejected since it was after almost 24 years, that the claim for compassionate appointment was made. The Hon'ble Court considered the financial status of her family and held in favour of the employer in refusing to grant compassionate appointment. Paragraph Nos. 8 to 9.2, read as under :-

"8. As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

8.1. In the case of State of Himachal Pradesh v. Shashi Kumar reported in (2019) 3 SCC 653, this Court had an occasion to consider the object

and purpose of appointment on compassionate ground and considered the decision of this Court in the case of Govind Prakash Verma v. LIC, reported in (2005) 10 SCC 289, in paras 21 and 26, it is observed and held as under:—

“21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138]. The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract : (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138],

“2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking

into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. 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 dependent 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.”

26. The judgment of a Bench of two Judges in Mumtaz Yunus Mulani v. State of Maharashtra [(2008) 11 SCC 384] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.”

9. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. 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 such family a post much less a post held by the deceased.

9.1. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided.

9.2. Under the circumstances, both, the learned Single Judge as well as the Division Bench of the High Court have committed a serious error in directing the appellants to reconsider the case of the respondent for appointment on compassionate ground. The impugned judgment and order passed by the High Court is unsustainable."

15. In the case in hands, considering the 2007 guidelines, the financial condition of the petitioner is un-disputedly precarious. The family is not able to earn an amount which is equivalent to the total emoluments of Group 'C' employee of the lowest rank. If the total income of the family is less than the total emoluments of Group 'C' employee of the lowest rank, the petitioner would be entitled for compassionate appointment. No doubt, it is practically 14 years that

have lapsed after the death of the petitioner's father. Nevertheless, it cannot be ignored that the petitioner became legally entitled to pray for compassionate appointment only on 02.09.2017 and he had made his application after 41 days on 12.10.2017. When he was eligible and his entitlement itself occurred on 02.09.2017 and the family income is dependent only on the pension of Rs.4,585/- that the widow receives, we find that this is an appropriate case wherein we can exercise our jurisdiction.

16. In the light of the above, this petition is partly allowed. Respondent Nos. 2 and 3 are directed to enlist the petitioner in the list of eligible candidates and depending upon the educational qualifications of the petitioner vis-a-vis the available posts, he would be considered for appointment on compassionate basis.

17. Rule is, therefore, made partly absolute.

(ARUN R. PEDNEKER, J.)

(RAVINDRA V. GHUGE, J.)