

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO. 2089 OF 2021

1. Smt. Anita Bhujang Wagalgave,
Age: 42 years, Occupation : Household,
2. Shri Nagraj Bhujang Wagalgave,
Age: 28 years, Occupation : Student.
3. Smt. Manisha Bhujang Wagalgave,
Age: 23 years, Occupation : Student.
4. Smt. Sapana Bhujang Wagalgave,
Age : 20 years, Occupation: Student,
All R/o : at Rachanawadi, Post Shelgaon,
Taluka Chakur, District Latur.

... Petitioners

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Development Department
Mantralaya.
2. The State of Maharashtra,
Through its Principal Secretary,
General Administration Department,
Mantralaya.
3. The Chief Executive Officer,
Zilla Parishad, Latur.
4. The Block Development Officer,
Panchayat Samiti, Taluka Chakur,
District Latur.

... Respondents.

...

Mr. A.D. Sonkawade, Advocate for petitioners
 Ms. R.P. Gaur, AGP for respondent Nos. 1 and 2
 Mr. S.S. Manale, Advocate for respondent Nos. 3 and 4

...

**CORAM : RAVINDRA V. GHUGE AND
S. G. DIGE, JJ.**

DATE : 12th APRIL, 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 petitioners have put-forth prayer clauses “B”, “C”, “D” and “E” as under:

“B” Issue a writ of mandamus or writ in the like nature directing the respondents to consider the representation dated 17-12-2019 submitted by the petitioners;

“C” Issue a writ of mandamus or writ in the like nature directing the respondents to include the name of Shri Nagraj Bhujang Wagalgave in the list of the relatives of the deceased / retired employees for appointment on compassionate ground;

“D” Pending the hearing issue a writ of mandamus or writ in like nature directing the respondents to consider the representation dated 17-12-2019 submitted by the petitioners;

“E” Pending the hearing issue a writ of mandamus or writ in like nature directing the respondents to include the name of Shri Nagraj Bhujang Wagalgave in the list of the relatives of the deceased/retired employees for appointment on compassionate ground.”

3. Having considered the strenuous submissions of the learned advocates for the respective parties, we find that this is a peculiar case in which, we are called upon to decide, as to whether the benefit of compassionate appointment can be granted to the legal heir of the employee, who has taken voluntary retirement and was never certified as being medically unfit to perform any work, though the reason for opting for retirement was a serious medical condition.

4. Petitioner No. 2 is the claimant before us, in view of the 'no objection' of the family members. The father of the petitioner, who was relieved on 05-05-2019, died on account of a medical condition he was suffering for a long time, within three months from being relieved, on 08-08-2019.

5. The undisputed factors involved in this case are as follows;

- (a) On 27-08-1987, the deceased was appointed in the service of the Zilla Parishad as a Senior Assistant.
- (b) A Neuro physician had examined the deceased on 19-10-2015 and had recorded his diagnosis as Hangfirten's disease. He recorded that the deceased had excessive Movements of the limbs and also has behavioral problems due to his neurological condition.
- (c) The medical prescriptions and treatment papers in

relation to the deceased having taken treatment from a specialized Neuro Physician from April, 2015 onwards are placed on record.

- (d) On 08-08-2016, the deceased had addressed the Tahsildar, Tahsil Office, Latur, after he was allotted election duty, stating in his communication that he is unable to perform the said duty since his entire body suffers from tremors and he is not able to work.
- (e) Since he was suffering from severe body tremors, the Block Development Officer, Panchayat Samiti, Chakur informed the Chief Accountant and Finance Officer, Zilla Parishad, Latur vide communication dated 02-08-2018, that the deceased is a disabled person. His body constantly suffers from tremors. He cannot even write anything with his hand and he is not able to perform any work. The office work is facing serious impediments. The registers and documents are not updated as he cannot hold a pen.
- (f) He was thus relieved from his duties.
- (g) The above communication was in response to the letter issued by the Chief Accountant and Finance Officer dated 01-08-2018. He had informed the Block

Development Officer not to relieve the deceased from employment.

- (h) On 02-11-2018, the District Civil Surgeon, Latur, medically examined the deceased on the instructions of the Chief Accountant and Finance Officer.
- (i) He expressed a view in the Medical Certificate dated 02-11-2018 that the deceased suffers from Diabetes - Mellitus (II).
- (j) Though the petitioner is a male, the Civil Surgeon, as per the details mentioned in the Medical Certificate, appears to have examined a female, and therefore, he has opined that he cannot discover that she is suffering from any disease and that she is found to be fit.
- (k) The Chief Accountant and Finance Officer once again addressed the Block Development Officer on 16-11-2018, stating that though the deceased appears to be unwell and his entire body suffers from tremors and the official work is seriously hampered, he cannot be relieved and that he should be reinstated in service, as the Block Development Officer had relieved him from 23-08-2018.

- (l) The deceased applied on 28-11-2018 for voluntary retirement under Rule 161 (2) of the Maharashtra Civil Services Rules, 1981. He prayed for being relieved from employment on 28-02-2019.
- (m) On 03-12-2018, the Block Development Officer addressed the Chief Executive Officer, Zilla Parishad stating therein that the deceased be granted voluntary retirement.
- (n) On 09-01-2019, the Chief Accountant and Finance Officer addressed the Block Development Officer to submit the proposal for voluntary retirement of the deceased.
- (o) Consequent to the above, the deceased was relieved from employment on 05-05-2019.
- (p) He passed away on 08-08-2019, after hospitalisation.

6. The wife of the deceased addressed the Chief Executive Officer of Zilla Parishad on 17-12-2019, contending that she had no knowledge that her husband had applied for voluntary retirement. He was constantly unwell. He could not sign and somebody has filled in an application for retirement on his behalf, by way of a mischief.

7. All the medical documents indicate a severe neurological problem, which was first diagnosed by a Neuro Physician when the brain

MRI was performed on 16-04-2015. The Clinical Profile was: C/o Headache, imbalance and the findings are “*There is small gliotic area seen in right posterior frontal parafalcine region appear hypointense on T1, hyperintense on T2 and suppressed on FLAIR images.*”

8. The learned Advocate representing the Zilla Parishad has drawn our attention to the Government Resolution dated 22-08-2005, clause (2) on internal page No. 3, vide which the policy of the Government with regard to appointment on compassionate basis had undergone a change. Unless the employee is not declared medically unfit due to which he is relieved from employment or has died due to illness, a legal representative of the employee falling in the categories ‘C’ and ‘D’ would not be entitled for compassionate appointment. He, however, fairly points out the judgment delivered by the learned Division Bench of the Maharashtra Administrative Tribunal (Coram: Justice A. H. Joshi, Chairman and Shri Rajiv Agarwal, Vice Chairman) dated 7th August, 2017 delivered in Original Application No. 1006 of 2015, filed by Shri Amol Gautam Deore and others versus The Additional Commissioner of Sales Tax, Nasik Zone and others. He submits that the Tribunal did not agree with Clause II of the Government Resolution dated 22-08-2005 and it was concluded that the same is discriminatory. A person, who is unwell, or suffers from serious illness and who is relieved from employment, would render his eligible legal heir to seek compassionate appointment.

9. We find from the judgment of the learned Division Bench of this Court [Coram : A.S. Oka (as His Lordship then was) and M.S. Sonak, JJ.] dated 24th October, 2018 delivered in Writ Petition No. 7008 of 2018, wherein the Additional Commissioner, Sales Tax had challenged the judgment delivered by the learned Tribunal in favour of Amol G. Deore and others. By the said judgment, the view taken by the Tribunal was sustained with reasons. Similar is the view taken by the learned Division Bench of this Court (Coram: S.C. Dharmadhikari and Smt. Bharati H. Dangre, JJ.) dated 11th December, 2018 in Writ Petition No. 7507 of 2016 filed by Smt. Samita Sameer Desai and others Versus The State of Maharashtra through Secretary and another.

10. The controversy in this petition is, that after the deceased was granted voluntary retirement in the backdrop of the medical opinion that he was not medically unfit, whether it would entitle petitioner No. 2 for compassionate appointment. By a plain understanding of this fact, petitioner No. 2 obviously would not be entitled for compassionate appointment. However, we see that there are certain turning factors in this case. The Officer of the Zilla Parishad agreed that the deceased was in a very bad physical condition. His illness was medically diagnosed. He was found to be suffering from a serious neurological problem affecting his nerve system for long time. His entire body used to shake as if he constantly had rigors. Because of such severe body tremors, he was

never calm and composed. His body was shaky. He was under treatment. Though he was a Senior Assistant, he could not lift a pen. He could not maintain the records. The entire department was suffering due to his medical condition as work was getting seriously hampered. There was a situation in 2018 when the Block Development Officer got exasperated and relieved the deceased from duty and informed the Chief Accountant and Finance Officer as well as the Chief Executive Officer that he could not continue the deceased under him as he was good for nothing.

11. We must understand the plight of the deceased and the ignominy that he was suffering. He used to attend office and his colleagues around him used to notice his severe medical problem. He was not living a normal life and because he was not able to perform any duties, he had become unwanted and undesirable. He even suffered an order of being relieved from duties. The Civil Surgeon examined him and surprisingly noted that “she is not suffering from any medical ailment and she is medically fit to work”. This led to his reinstatement under the Block Development Officer.

12. We have reasons to disbelieve the medical certificate issued by the Civil Surgeon. We confess that we do not have the expertise to form a view against the opinion expressed by a Civil Surgeon. However, we find from the opinion of the Civil Surgeon that he has referred to the

deceased as a female. Therefore, we have doubts as to whether he had seriously examined the deceased, more so in the backdrop of the attending circumstances that have been discussed in the forgoing paragraphs, in the light of the documentary evidence before us.

The deceased underwent medical treatment from 2015, after a brain MRI. The Neuro Physician made a diagnosis and based on the same, the line of treatment was decided. He was constantly under treatment. Such medical papers, prescriptions and the medicines prescribed, are before us. These facts were never considered by the Civil Surgeon. After he was relieved on 05-05-2019, he was admitted in the hospital and passed away within three months in the hospital, on 08-08-2019.

13. It is in these circumstances that we are arriving at an unprecedented conclusion that the deceased indeed had a severe medical ailment and as he was suffering from serious neurological problems, that he was apparently not fit to work. The time lag after he was relieved and his death, further supports our view.

14. The learned Advocate for the Zilla Parishad refers to clause 'B' of Government Resolution dated 28-03-2001, to contend that legal representatives can be considered for compassionate appointment if the father/mother was relieved from employment due to medical condition prior to completing the age of 50 years. We are of the view that such a

provision is discriminatory and capricious. The Zilla Parishad should not take assistance of the said Government Resolution in the light of the fact that the said Government Resolution merged in the Government Resolution dated 28-02-2005 wherein the Zilla Parishad practically eliminated all the contingencies applicable for appointment on compassionate basis, save and except, the death of a person while on duty, falling in categories 'C' and 'D'. So also clause 2 (ii) of 2005 Government Resolution enables a candidate upto 40 years of age, to be eligible for appointment on compassionate basis. So also, the 2001 Government Resolution having merged in the 2005 Government Resolution, which was subsequently held to be inapplicable by the learned Tribunal as well as the learned Division Bench of this Court would, therefore, convince us that there is no impediment in the path of petitioner No. 2 from being considered for appointment on compassionate basis.

15. In *V Shivmurty versus State of Andhra Pradesh and others (2008) 13 SCC 730*, the Honourable Apex Court held in paragraph No. 24 to 30 as under :

“24. The decisions make it clear that exceptions to the rule, may relate to several contingencies, one of which is employee dying-in-harness. There can be exceptions in other extreme cases of sudden deprivation of means of livelihood. If the intention was to restrict compassionate appointments only to cases of death in

harness, these two decisions would have obviously used the words "exception" and "contingency" instead of "exceptions" and "contingencies". Further in Yogender Pal Singh versus Union of India, (1987) 1 SCC 631, this Court made it clear that while appointment only on the criterion of descent would be unconstitutional, appointment of a dependant is permissible both when the government servant dies in service or is incapacitated while rendering service.

25. We may also notice that this Court dealt with provisions relating to compassionate appointments on medical invalidation in several cases, but did not hold that such appointments were violative of Article 16. Reference may be made to *W.B. SEB V. Samir K. Sarkar*, (1999) 7 SCC 672 and *Food Corporation of India V. Ram Kesh Yadav*, (2007) 9 SCC 531. Be that as it may. The assumption by the High Court, that this Court had held that compassionate appointments can be only in death-in-harness cases and not in retirement on medical invalidation cases, is not sound.

26. As an incidental reason for holding that compassionate appointments are not permissible in cases of medical invalidation, the High Court has observed that death stands on a "higher footing" when compared to sickness. The inference is compassionate appointment in case of medical invalidation cannot be equated with death in harness cases, as medical invalidation is not of the same degree of importance or gravity as that of death; and that as medical

invalidation is not as serious as death in harness, exception can be made only in cases of employees dying in harness. But what is lost sight of is the fact that when an employee is totally incapacitated (as for example when he is permanently bed ridden due to paralysis or becoming a paraplegic due to an accident or becoming blind) and the services of such an employee is terminated on the ground of medical invalidation, it is not a case of mere sickness. In such cases, the consequences for his family, may be much more serious than the consequences of an employee dying in harness.

27. *When an employee dies in harness, his family is thrown into penury and sudden distress on account of stoppage of income. But where a person is permanently incapacitated due to serious illness or accident, and his services are consequently terminated, the family is thrown into greater financial hardship, because not only the income stops, but at the same time there is considerable additional expenditure by way of medical treatment as also the need for an attendant to constantly look after him. Therefore, the consequences in case of an employee being medically invalidated on account of a serious illness/accident, will be no less, in fact for more than the consequences of death-in-harness. Though generally death stands on a higher footing than sickness, it cannot be gainsaid that the misery and hardship can be more in cases of medical invalidation involving total blindness, paraplegia serious incapacitating illness, etc.*

28. *Another observation made by the High Court in support of its conclusion is that "while considering the cases of sick employees, the court cannot lose sight of cases of sick unemployed." What the High Court apparently means is that if an exception is made for compassionate appointments in the case of an employee medically invalidated, it may account to hostile discrimination, as compassionate appointment is not extended in case others who are equally sick but are not employees of the government. But the same logic is applicable to death-in-harness cases also. It can equally be said that "while considering the cases of death of employees in service, the court cannot lose sight of cases of death of other unemployed poor". Members of the family of a deceased are thrown into penury and hardship not only where the deceased is a government servant, but also where they belong to weaker or poorer sections of the society. In fact in the case of death of government servants, there is at least family pension and terminal benefits. But in the case of death of anyone belonging to poor and weaker sections, there is nothing at all to support their families. Should compassionate appointments be therefore stopped even in death-in-harness cases also? The issue is complex. Comparison with non-employed is neither logical nor sound.*

29. *When compassionate appointment of a dependant of a government servant who dies in harness is accepted to be an exception to the general rule, there is no reason or justification to hold that an*

offer of compassionate appointment to the dependant of a government servant who is medically invalidated, is not an exception to the general rule. In fact, refusing compassionate appointment in the case of medical invalidation while granting compassionate appointment in the case of death in harness, may itself amount to hostile discrimination. While being conscious that too many exceptions may dilute the efficacy of Article 16 and make it unworkable, we are of the considered view that the case of dependants of medically invalidated employees stands on an equal footing to that of dependants of employees who die in harness for purpose of making an exception to the rule. For the very reasons for which compassionate appointments to a dependant of a government servant who dies in harness are held to be valid and permissible, compassionate appointments to a dependant of a medically invalidated government servant have to be held to be valid and permissible.

30. There are of course safeguards to be taken to ensure the scheme is not misused. One is to ensure that mere medical unfitness to continue in a post is not treated as medical invalidation for purposes of compassionate appointment. A government servant should totally cease to be employable and become a burden on his family, to warrant compassionate appointment to a member of his family. Another is barring compassionate appointments to dependants of an employee who seeks voluntary retirement on medical grounds on the verge of superannuation. This

*Court observed in Ram Kesh Yadav (supra) as follows :
(SCC P.535, Para 9)*

"9. But for such a condition, there will be a tendency on the part of employees nearing the age of superannuation to take advantage of the scheme and seek voluntary retirement at the fag end of their service on medical grounds and thereby virtually creating employment by 'succession'. It is not permissible for the court to relax the said condition relating to age of the employee. Whenever a cut-off date or age is prescribed, it is bound to cause hardship in marginal cases, but that is no ground to hold the provision as directory and not mandatory."

*We find that in this case stringent safeguards were in fact built into the scheme on both counts by GMs dated 4-7-1985 and 9-6-1998.
Re: Question No. (ii)"*

[emphasis supplied]

16. It is apparent from the record available before the Court that the deceased did not seek voluntary retirement at the stroke of superannuation. It is not that he has pretended to be ill or incapacitated so as to facilitate an employment to his son. The facts and circumstances emerging from the record indicate that he was indeed seriously ill and the neurological problem that he was suffering from, was life

threatening considering the MRI scan of his brain conducted by the Neurosurgeon on 09-10-2015. His physical condition continued to deteriorate. The entire department was of the confirmed view that he was incapacitated and he was not in a condition to perform any work, even soft work. It is, thus, obvious to us that the entire department desired that he should seek voluntary retirement only because of his terrible medical condition.

17. In the light of the above, this petition is partly allowed. We are, therefore, issuing the following directions:-

(a) Petitioner No. 2-Shri Nagraj Bhujang Wagalgave, 24 years old son of the deceased, who is an Engineering Graduate, be enlisted in the list of the eligible candidates for compassionate appointment, considering his representation made before he graduated.

(b) His seniority in the list of eligible candidates would be from the date when he became an Engineering Graduate on 26th July, 2019.

(c) The Chief Executive Officer, Zilla Parishad would consider availability of a vacancy, on which petitioner No. 2, could be appointed and accordingly issue an order of appointment as and when such vacancy arises.

18. Rule is made partly absolute in above terms.

(S.G. DIGE)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE