

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13951 OF 2021

Satish S/o Panditrao Ravate,
Age : 34 Years, Occu. : Nil,
R/o Vidul, Tq. Umarkhed,
District Yavatmal.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Ministry of Energy Department,
Mantralaya, Mumbai – 32.

2. The Chief Engineer,
M.S.E.D.C. Ltd., Nanded Zone,
Zone Office, Nanded,
Nava Mondha, Vidhyut Bhavan,
Nanded, Tq. & Dist. Nanded.

3. The Superndendent Engineer,
M.S.E.D.C. Ltd., Nanded Zone,
Circle Office, Nanded,
Nava Mondha, Vidhyut Bhavan,
Nanded, Tq. & Dist. Nanded.

4. The Executive Engineer,
M.S.E.D.C. Ltd.,
Divisional Office at Bhokar,
Tq. Bhokar, Dist. Nanded.

.. Respondents

Shri Vaibhav B. Dhage, Advocate for the Petitioner.
Mrs. V. N. Jadhav Patil, A.G.P. for the Respondent No. 1.
The Respondent Nos. 2 and 3 served.
Shri Anil M. Gaikwad, Advocate for the Respondent No 4.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.
DATE : 23.09.2022.**

JUDGMENT (*Per Sandeep V. Marne, J.*) :

1. Petitioner's claim for compassionate appointment, premised on his father's death in 1994, is strenuously pressed before us.

2. We would first summarise the legal principles governing compassionate appointment, before advertng to the facts of the case. Compassionate appointment is a beneficial provision made to enable the family of the deceased employee to tide over the situation and to provide immediate succor to the destitute family. Compassionate appointment is not a matter of right. Courts can direct only consideration of case of compassionate appointment and not decide entitlement to it. Right of consideration for compassionate appointment flows out of the Scheme formulated or adopted by the employer and in absence of such a scheme, Courts cannot direct such consideration. It is wholly upto to the employer to adopt the scheme and to restrict it to specified category of employees and it is beyond the scope of Courts to extend the same to employees kept out of its ambit. Time is a crucial factor in determining the need for grant of compassionate appointment to the family of the deceased employee. Passage of long time after death of an employee raises a presumption that the family would no longer require any financial assistance in the form of compassionate appointment. These are basic principles governing the subject of compassionate appointment which are enunciated by various judicial precedents.

3. Despite the above settled principles, claims for

compassionate appointment continue to be pressed before Courts as if it is a matter of right. Stale cases continue to be filed and strenuously fought ignoring the very objective behind grant of compassionate appointment. In absence of any time limit being set by employers after which candidates are to be removed from waitlist, compassionate appointment is being misunderstood to be some sort of a hereditary right which can be passed on to the next generations. We are constrained to make these observations as we deal with a case in hand where not only 28 long years have passed from the death of the employee, but the mother availed of contractual employment in the organization on death of her husband and now the son has expectation of securing a compassionate appointment.

4. Having expounded the well settled principles relating to compassionate appointment, we now advert to the factual matrix of the case. We have a petitioner before us, whose father was working on Non Muster Role (N.M.R.) basis with the Maharashtra State Electricity Distribution Company Ltd. (for short "MSEDCL") and who died in harness on 29.01.1994. By order dated 21.05.1986 he was granted higher rate of wages amounting to 100% of the total wages including minimum basic pay plus admissible D. A. and H.R.A. Before being appointed on regular or permanent basis, the employee expired on 29.01.1994. His mother first applied for compassionate appointment and was offered work on contractual basis, which she apparently continued performing till she suffered from paralysis. After attaining the age of majority in 2005, Petitioner applied for compassionate appointment to himself.

5. At the relevant time, the scheme for compassionate appointment formulated by the respondent-company covered all employees as well as such of the temporary employees who had put in three years' service and who expired while in service or retired prematurely on medical ground. The scheme was also extended to temporary employees and work charged and N.M.R. workers, who met with fatal accident while on duty. The Scheme did not cover NMR employees who died natural death. Considering the provisions of the scheme, the petitioner's application for compassionate appointment was turned down by letter dated 17.04.2007 on the ground that his father's death was natural. In the meantime, the scheme was amended by Correction Slip No. 286 dated 28.01.2005, under which N.M.R. workers dying natural death were also brought within the ambit of the scheme with a condition that they had completed five years service as on 30.09.1994 or thereafter. The petitioner went on pursuing his case, which was once again turn down on 08.03.2011. He thereafter made representations through the elected representatives, which resulted in reconsideration of his case and final rejection on 28.06.2021 on the ground that his father did not complete 5 years' of service as on 30-09-1994. Order dated 28-06-2021 is the subject matter of challenge before us.

6. Mr. V. B. Dhage, learned counsel appearing for the petitioner has strenuously pressed the claim for compassionate appointment. He has submitted that reason for rejection of application for compassionate appointment stated in the letter dated 28.06.2021 is totally erroneous. He would contend that Petitioner's father did complete 5 years of service prior to 30-09-

1994. He would further submit that the correction slip dated 28-01-2005 would not apply to present case as death occurred prior to issuance of the same.

7. Undeniably, the petitioner's father was working on Non Muster Role basis, indicating thereby that he was not a regular or permanent employee of the respondent-company. He met with death before being regularized in service. At that time, NMR workers meeting with fatal accidents alone were brought within the ambit of compassionate appointment scheme. The scheme was amended by Correction Slip No. 286 dated 28.01.2005 and following provision was made :

2. The scheme shall also cover the cases of dependent of the employee working on work-charged or N.M.R. (daily rated).

(I) who has completed 5 years as on 30.9.94 or thereafter and expired while in service.

8. Thus, under the amended scheme, the work-charged/N.M.R. workers dying natural death were also brought within the ambit of the scheme with a condition that they should complete five years' service 'as on' 30.09.1994 or thereafter. For those work charged/N.M.R. workers, who had not put in five years' service as on 30.09.1994, earlier condition of meeting with fatal accident on duty continued to apply.

9. In the present case, petitioner's father did not met with fatal accident while on duty. Therefore, as per the correction slip, it was incumbent for him to fulfill the condition of completion of five years of service 'as on' 30.09.1994 or

thereafter. However, he expired on 29.01.1994 and was not in service as on 30.09.1994. Thus, even the amended scheme did not become applicable to him.

10. Mr. Dhage, attempted to canvass before us that petitioner's father had completed five years of service '*before*' 30.09.1994. However, he missed the point that the petitioner's father was not in service '*as on*' 30.09.1994. The amended scheme used the expression "*completed five years as on 30.09.1994 or thereafter*". Thus five years' service is required to be completed either on 30.09.1994 or thereafter. The completion of five years of service before 30.09.1994 is inconsequential. Thus, we are of the view that the petitioner's father was not covered by the compassionate appointment scheme formulated by the respondent-company as amended from time to time. The respondents have rightly rejected his case.

11. We must also observe that after the employee's death on 29.01.1994, the mother had applied for compassionate appointment and she was engaged on contract basis immediately thereafter. It is contended that later she was paralyzed and was unable to perform her duties. No specific date is disclosed in the petition till which she continued in contract service. The petitioner attained majority on 08.06.2005 and filed application dated 07.10.2005 for compassionate appointment. The same was turned down on 17.04.2007 and 23.10.2007 as observed hereinabove. He went on pursuing his case which was once again turn down on 08.03.2011. He thereafter made representations through the elected representatives, which resulted in reconsideration of his case and final rejection on 28.06.2021.

Thus, it is seen that after death of the employee who was not even a regular or permanent employee, the petitioner's mother worked on contract basis possibly upto the year 2005. Though same was not a compassionate appointment, it can very well be seen that she started earning after death of her husband. It is therefore difficult to presume that the family was in any financial penury after death of the employee.

12. We must note that by now a long period of 28 years has elapsed from the date of death of the employee. When the family has been able to tide over the situation during the last 28 long years and when mother was engaged for few years on contract employment, can it be said that it is still in need of any financial assistance in the form of compassionate appointment ? In our view, the answer to the question is definitely in the negative. We may therefore make a profitable reference to the recent decision of the Apex Court in the case of **Central Coalfields Limited Through its Chairman and Managing Director and others Vs. Smt. Parden Oraon in Civil Appeal No. 897 of 2021 decided on 09.04.2021** in which it is held in para No. 8 as under :

8. The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis which arises due to the death of the sole breadwinner. The mere death of an employee in harness does not entitle his family to such source of livelihood. The 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 the job is offered to the eligible member of the family¹. It was further asseverated in the said judgment that compassionate employment cannot be granted after a lapse of reasonable period as the consideration of such employment is not a vested right which can be exercised

at any time in the future. It was further held that the object of compassionate appointment is to enable the family to get over the financial crisis that it faces at the time of the death of sole breadwinner, compassionate appointment cannot be claimed or offered after a significant lapse of time and after the crisis is over.

13. What remains now is to deal with the judgments cited by Mr. Dhage. He has relied upon the decision of the Apex Court in the case of **Canara Bank and another Vs. M. Mahesh Kumar** reported in **2015 AIR SC 2411** in support of his contention that the Correction Slip No. 286 dated 28.01.2005 cannot be made applicable to his case as the death occurred on 29.01.1994. We have already held hereinabove that the Correction Slip brought the work charged/N.M.R. workers dying natural death within the ambit of compassionate appointment scheme for the first time. Prior to the said correction slip, the work charged/N.M.R. employees were eligible only in case of fatal accident while on duty. If the contention of Mr. Dhage about prospective operation of the Correction Slip No. 286 dated 28.01.2005 is to be accepted, the petitioner's father being N.M.R. employee dying natural death was not covered by the compassionate appointment scheme that existed prior to 28.01.2005. Therefore, reliance of Mr. Dhage on the decision in the case of **Canara Bank** (supra) is totally misplaced.

14. Mr. Dhage, has also relied upon judgment of the Division Bench of this Court at Nagpur in the case of **Smt. Chandrakant Gupta Raje Vs. The Chairman, Maharashtra State Electricity Board and others** reported in **2003(3) All MR 396**. In that case, the employee concerned was initially working with the respondent-company since 1973 and he was later selected for

temporary appointment by order dated 05.09.1988. He expired on 19.01.1991. The issue was about counting of three years of service in respect of temporary appointment. This Court held that the period of three years is required to be counted on the date of his selection as temporary employee and not from the date of assuming duties of the post. We have already observed hereinabove that temporary employees completing three years of service were covered by the initial scheme for compassionate appointment (prior to issuance of Correction Slip No. 286 dated 28.01.2005). The petitioner's father was admittedly not a temporary employee. He was N.M.R. employee. Therefore, the judgment in the case of **Smt. Chandrakant Gupta Raje** (supra) has no application to the present case.

15. We, therefore, find that the petition is devoid of any merits and the same deserves to be dismissed. It is accordingly dismissed without any orders as to costs. Rule is discharged.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Sept. 22