

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

WRIT PETITION NO.11067 OF 2022

1. Dipika Diliprao Dalvi,
Age : 48 years,
Occupation : Household,
R/o Mu.Post Kurunda,
Tq.Vasmat, Dist.Hingoli.

2. Aditya Diliprao Dalvi,
Age : 21 years,
Occupation : Education,
R/o Mu.Post.Kurunda,
Tq.Vasmat, Dist.Hingoli.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through the Principal Secretary,
School Education and Sports Department,
Mantralaya, Mumbai-32.
2. The Director of School Education,
Pune-01.
3. The Deputy Director of School Education,
Aurangabad.
4. The Education Officer, Zilla Parishad, Hingoli.
5. The Chief Executive Officer, Zilla Parishad,
Hingoli.

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Advocate for the Petitioners : Shri Deshpande Abhishek C.
AGP for Respondents 1 to 3/State : Ms.Rashmi P. Gaur
Advocate for Respondents 4 and 5 : Shri S.B. Pulkundwar

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**CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.**

DATE :- 15th December, 2022

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

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

2. On 10.11.2022, we had passed the following order :-

“1. *Petitioner No.1 is a widow. Her husband passed away while in service of a school on 22.01.2009. The widow applied for appointment on compassionate basis on 09.11.2009. For the first time, an application is moved on 20.12.2018, which is after almost 10 years, seeking substitution of petitioner No.1 by petitioner No.2. She has two daughters and one son. The son, petitioner No.2, was born on 20.03.2001 and attained the age of 18 years on 20.03.2019. He moved an application on 22.08.2019 to have his name entered in the list of candidates seeking compassionate appointment, in place of his mother.*

2. *We find that this petition does not contain pleadings as regards how the petitioners' family survived for almost 14 years after the death of the bread earner. There are no details about the marital status of the two daughters. There are no details tendered as regards whether the widow had earned any income or had received any pension which sustained herself and her family. The Hon'ble Supreme Court has concluded that the purpose of granting compassionate appointment, after passage of decades or more, would actually defeat the purpose of granting compassionate appointment.*

3. *We, therefore, called upon the petitioners to give us the details as to how the family survived for the last 14 years and as to what is the marital status of the two daughters. Let such information be placed on record by filing*

an affidavit of petitioner No.1.

4. *At the request of the petitioner, stand overt to 05.12.2022, in the 'urgent' category."*

3. The petitioner has filed an affidavit dated 03.12.2022, which is taken on record and marked as "X" for identification. It is set out in the affidavit that after the husband of the petitioner passed away on 22.01.2009, petitioner No.1/widow had tendered an application on 09.11.2009 seeking compassionate appointment. Her name was enlisted in the list of eligible candidates. She has two daughters and one son. The elder daughter got married in 2014 and is now settled in life. The second daughter has completed her graduation in Commerce faculty and is 23 years of age. Son is about 21 years of age and is pursuing his second year in the D.Ed. Course. Petitioner No.1 is receiving family pension of Rs.14,500/- per month. There is no other source of income. She has, therefore, prayed that as she has turned 48 years of age, her son may be substituted in her place and be granted compassionate appointment.

4. The law on compassionate appointment has now been crystallized by the Honourable Supreme Court of India in *Fertilizers and Chemicals Travancore Ltd. And others. Vs. Anushree KB, (2022) SCC Online SC 1331, Director of Treasuries in Karnataka vs. Somyashree, (2021) SCC Online SC*

704 and *State of Uttar Pradesh and others vs. Premlata, (2022) 1 SCC 30*, on the following aspects :-

(a) Compassionate appointment is not a right to be exercised or enforced.

(b) Compassionate appointment is an exception to the general rule of recruitment.

(c) Compassionate appointment to a public post has to be made on the basis of the principle under Articles 14 and 16 of the Constitution of India.

(d) Appointment on compassionate ground is possible on fulfillment of the norms laid down by the State's policy or eligibility criteria.

(e) Compassionate appointment is not a mode of recruitment and is meant for granting immediate succour/ financial assistance to the family, which needs to be evaluated on the basis of the earning of the family.

(f) Compassionate appointment beyond the prescribed period would lose its significance.

5. The petitioner's name has been delisted by the Zilla Parishad after she completed 45 years of age. We need not consume space in this judgment for dealing with the issue as to whether, the name of a dependent can be inserted in place of an

earlier listed eligible candidate, in the light of the view taken by this Court in ***Dnyaneshwar Ramkishan Musane vs. State of Maharashtra and others, 2020 (5) Mh.L.J. 381*** vide which, the particular clause not permitting substitution under the Government Resolution dated 20.05.2015, has been held to be ultra vires. As such, principally petitioner No.1 can be replaced by an eligible legitimate dependent and the proposed replacement is the son of petitioner No.1, who is now 21 years of age.

6. However, the prayer of the petitioner hits a roadblock in the light of the judgment delivered by the coordinate Bench of this Court dated 20.08.2022 in Writ Petition No.4451/2021 filed by ***Mangalabai Janardhan Shinde and another vs. The State of Maharashtra and another***. It has been held that clause 11 of the Government Resolution dated 21.09.2017, which mandates deletion of the name of a candidate from the list of eligible compassionate appointees on attaining the age of 45 years, does not permit replacement of another candidate after the name has already been delisted.

7. Petitioner No.1 is now 48 years of age and her name stood delisted three years ago when her son was not eligible for appointment as he was not an adult. As such, this case would be squarely covered by ***Nagmi Firdos Mohammad Salim and***

another vs. State of Maharashtra and others, Writ Petition No.4559/2018, decided on 15.12.2021.

8. Even if we ignore the above aspect of the widow being deleted from the list three years ago, we cannot ignore the fact that the bread-earner in the family passed away on 22.01.2009, which is almost 13 years and 11 months ago. The Honourable Supreme Court has crystallized the law that as the compassionate appointment is not a right to be enforced, it has to be granted only in the circumstances wherein, the family needs immediate financial assistance.

9. In the instant case, the eldest daughter of the couple has got married in 2014. The second daughter is now 23 years of age. The third child, a son, is 21 years of age and is pursuing his education in D.Ed. (second year). With the passage of almost 14 years and in the light of the family status as noted above, we are of the view that the case of the petitioner cannot be entertained for grant of compassionate appointment. The family has already overcome the financial crisis with the passage of 14 years.

10. In these circumstances and in the light of the law laid down by the Honourable Supreme Court in *Fertilizers and Chemicals Travancore Ltd. (supra)* and catena of judgments concluding that the compassionate appointment cannot be granted after a long spell post demise of the bread-earner, we are

unable to entertain this Writ Petition and the same is, therefore,
dismissed.

11. Rule is discharged.

kps (SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)