

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

WRIT PETITION NO. 3417 OF 2022

1. Jagdish Pundlik Wagh, ...**PETITIONERS**
Age-44 years, Occu-Labourer,
R/o. Bhimnagar, Sakri Road,
Dhule
2. Yashwant Jagdish Wagh,
Age-21 years, Occu-Nil,
R/o. Bhimnagar, Sakri Road,
Dhule

VERSUS

1. The State of Maharashtra, ...**RESPONDENTS**
Through It's Department of
Soil and Water Conservation Department
and General Administration
Mantralaya, Mumbai-32
2. The Commissioner,
Soil and Water Conservation,
Aurangabad
3. The Superintending Engineer,
Minor Irrigation Circle (Local Section)
Nashik Tryambak Road, Bhawani Chowk,
Nashik
4. Assistant Superintending Engineer,
Minor Irrigation (Local Section),
Dhule Sub Division,
Dhule

5. The Collector, Dhule,
Dist. Pune

Mr.S. P. Shah, Advocate for the petitioners
Mr. S. K. Tambe, AGP for the respondents/State

**CORAM : RAVINDRA V. GHUGE &
ANIL L. PANSARE, JJ.**

DATE : 27th June, 2022

JUDGMENT [PER: ANIL L. PANSARE, J.]

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsels for the respective parties.

2. The petitioners are seeking writ of mandamus seeking directions to the respondents to offer an appointment to the petitioner No.1 on compassionate ground.

3. Having heard both the sides and having gone through the record, it appears that petitioner No.1 is 44 years old. His mother Laxmibai expired on 15-12-2002, while she was in service. Petitioner No.1 was then 27 years old. He claims to have no knowledge of the policy of the government in respect

of appointment on compassionate ground. When the petitioner No.1 came to know about such policy, he submitted his first application on 21-03-2006 with the respondents seeking appointment on compassionate ground. He was 31 years old at that time. He made repeated request for his appointment, but respondent Nos. 3 and 4 did not take cognizance of his request.

4. It is the case of the petitioners that in the year 2002 when mother of petitioner No.1 expired, the then existing policy permitted the persons like petitioners to make an application for appointment on compassionate ground within the period of five years of the death of the employees. However, said policy came to be modified on 22-08-2005, thereby reducing the period to one year.

5. Respondent No.3 on 21-02-2008, rejected the application of petitioner No.1 on the ground that the appointment was sought after the period of limitation.

6. Thereafter, petitioner No.1 went on to make correspondences with the respondents, particularly respondent No.3 to pursue his claim on the ground

that limitation for filing the application was 5 years at the relevant time and not one year.

7. It appears that in the year 2016, respondent No.3 sought guidance from the State Government. In response, the State Government appears to have informed respondent No.3 that the petitioner's claim would be governed by the government resolution dated 26-10-1994 and not by the government resolution dated 22-08-2005. In June, 2017, the name of the petitioner No.1 was included in the wait-list. However, the appointment was not given. The petitioner No.1 made further representations. He has now come up with a plea that on 16-11-2021 he would attain the age of 45 years and therefore, his name is likely to be deleted from the wait-list. Accordingly, an alternative prayer is made seeking direction to the respondents to appoint petitioner No.2 in place of the petitioner No.1. In the process the petitioners have lost almost 20 years.

8. The question before the court is whether, in such circumstances, the claim of the petitioners is maintainable. The answer would be in the negative for the reasons to follow.

9. It is well settled by now that the compassionate appointment is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. Thus, the purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the bread-earner in the family. Such appointments should be provided immediately to redeem the family in distress.

10. Thus, if the appointment is not made within a reasonable time, persons like the petitioners ought to approach appropriate forum for redressal of their grievance. Having not done so for 20 years, the petitioners would not be entitled for appointment by resting their case on the alleged errors committed by the respondents or on the basis of representations made by the petitioners. In the case of Surjit Singh Sahni Vs State of UP and Ors. In Special Leave Petition @ NO. 3008 of 2022, it has been held by the Hon'ble Supreme Court that mere representations would not survive the limitation period.

11. The learned advocate for the petitioners has relied upon the judgment in the case of Leelabai Yashwant Ghodke and another Vs Union of India and others, 2018 (5) Mh.L.J. 458. The widow of the deceased Railway employee was 54 years old and was offered compassionate appointment. The High Court observed that the widow will be able to serve only for 4-5 years. She has received all pensionary and retiral benefits of the deceased. There was an agreement between the widow and petitioner No.2 son therein. The widow consented for the claim of petitioner No.2 to be considered on compassionate appointment. In the peculiar facts, the High Court directed the respondents therein to appoint the petitioner No.2 on compassionate ground.

12. This judgment will not be applicable to the petitioners. The deceased employee therein had expired in June 2008. The deceased had two wives. Second marriage was performed after demise of the first wife. Thereafter, a dispute arose between the widow and the children of the first wife and the second wife as to who would be entitled for pensionary and retiral benefits. In order to resolve this dispute an agreement was executed in the year

2008 and accordingly claim of compassionate appointment was made. The respondent did not take any decision. The petitioner therein, therefore, approached the Central Administrative Tribunal in 2012. The Tribunal directed the Railway to decide the pending representation. After couple of round of litigation, the respondent-Railway ultimately offered appointment to the widow of deceased employee. The High Court, taking overall view of the matter thought it appropriate to issue directions to the respondents therein to appoint the petitioner No.2 son therein on compassionate appointment. In the present case, appointment has not even been offered to the petitioners.

13. The learned advocate for the petitioners has then referred to another judgment of the Bombay High Court in the case of Roshan Vitthal Kale and others Vs State of Maharashtra and others, 2020(3)Mh.L.J.470. Their Lordships [Coram: Ravindra V. Ghuge and S. M. Modak, JJ], in view of the facts before the court, held that the claim for compassionate appointment made after the prescribed period of one year from the date of the death of the employee, was maintainable. The court noted that the

Associate Professor therein was specifically under an obligation to inform the petitioner therein that he was eligible for compassionate appointment. It was then noted that the Associate Professor failed to ensure that application was prepared and accepted within a period of one year. The petitioner therein and two young sisters were leaving in abject poverty. In the circumstances, the High Court directed the respondents to accept the application.

14. In our view the said judgment will also be of no help to the petitioners in as much as the High Court by referring to the judgment of the Hon'ble Apex Court acknowledged that the applications for appointment on compassionate ground cannot be considered after several years of the demise of the earning member but found that the factors before the court were distinguishable and accordingly issued aforesaid directions.

15. In the present case, status is such that the petitioner No. 1 has submitted his first application seeking appointment on compassionate ground on or about 21-03-2006. The application itself was made after the period of about 4 years of the death of

his mother. The policy prevailing on the date of filing the application i.e. 21-03-2006 seeking compassionate appointment prescribed a period of one year of the death of the employee. In the case of N. C. Santhosh Vs State of Karnataka and others (2020) 7 SCC 617, the Apex Court has held that norms prevailing on the date of consideration of the application would be basis for considering the claim for compassionate ground and not the norms as applicable on the day of death of deceased employee. In that sense respondent No. 3 was fully justified in rejecting the application of the petitioner No. 1 on the ground that the appointment was sought after the period of the limitation. This rejection was communicated to the petitioner No. 1 vide communication dated 21-02-2008. The petitioner No. 1 did not challenge rejection but pursued his claim by making representations.

16. In the circumstances, even if the said application was to be considered on the basis of the policy existing at the time of the death of the mother of the petitioner No. 1, the petitioner No.1 ought to have approached the appropriate forum putting forth his grievance that respondent Nos. 3

and 4 are not paying heed to his request. Instead he went on making representations which do not revive limitation nor does it help the petitioner to substantiate the claim of financial crisis.

17. Surprisingly, in June, 2017 the name of the petitioner No. 1 was included in the wait-list. The appointment, however, was not given. The Petitioner No. 1 did not challenge inaction of respondent No. 3 but went on making representations. By the time, he has approached this court, he lost almost 20 years. At the same time he survived for last 20 years and managed his family including his son - petitioner No.2.

18. In the circumstances, mere death of the employee in harness will not entitle the petitioner to seek compassionate appointment. The Hon'ble Apex Court in the case of Central Coalfields Limited Through its Managing Chairman and Managing Director and ors Vs Smt. Parden Oraon, in civil appeal No. 897/2021, has noted in paragraph 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 family. 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 cannot be claimed or offered after a significant lapse of time and after the crisis is over."

Thus, compassionate appointment cannot be granted after lapse of reasonable period and after the crisis is over. It cannot be therefore, said that the petitioners would be entitled for compassionate appointment. Sympathy cannot be shown after 20 years, at least in the given facts and circumstances of the case. It appears to us that the petitioner No.1 is making an attempt to seek employment for his son, the petitioner No. 2 bypassing the rigour of regular mode of the appointment. There is, thus, no merit in the case.

19. The petition is dismissed. Rule is discharged.

[ANIL L. PANSARE, J.]

[RAVINDRA V. GHUGE, J.]