

Urmila Ingale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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**WRIT PETITION NO. 6819 OF 2021
WITH
INTERIM APPLICATION NO. 3820 OF 2021**

Bhagyashree Pradeep Chopade .. Petitioner
Vs.
Maharashtra Industrial Development
Corporation and ors. .. Respondents

Mr. Ajinkya Udane, for the Petitioner/Applicant.
Ms. Shyamali Gadre i/b Little & Co., for the Respondents.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE : MARCH 8, 2022

P.C. :

1. The petitioner has instituted this writ petition dated 11th January, 2021 with the prayer to quash the letters dated 16th November, 2018 and 6th February, 2019 passed by the respondents 2 and 3, respectively, being officers of the Maharashtra Industrial Development Corporation (hereafter "MIDC") rejecting her prayer for compassionate appointment as well as for a direction to the respondents to consider her application within 4 (four) weeks. While the first letter is addressed to the petitioner, the second is addressed to her mother.

2. The petitioner's father, Pradeep Laxman Chopade (hereafter "deceased employee"), died-in-harness on October 14, 2013 leaving behind him his widow, Smt. Mangala, 3 (three) daughters, Smt. Pranali, Smt. Dhanashree and Smt. Bhagyashree (the petitioner), and a son (Atharva) as his surviving heirs. Initially, the petitioner's mother had applied for compassionate appointment but such application was rejected on the ground of she being over-aged.

3. The petitioner thereafter applied for compassionate appointment on December 1, 2015. In such application, however, the petitioner did not disclose that she has a younger sibling by the name of Atharva. Incidentally, the fact that a son was born in the wedlock of the deceased employee and the petitioner's mother was completely suppressed in the documents that were submitted along with the applications for compassionate appointment made by the petitioner's mother as well as by the petitioner.

4. Upon receipt of the petitioner's application, her name figured in a waiting list. It was during a subsequent enquiry, conducted in connection with the petitioner's application for compassionate appointment, that the concerned officer of the MIDC unearthed the fact of a boy child being born to the deceased employee and his wife on 18th July, 2008 when they had 3 (three) girl children, referred to above.

5. Government Resolution dated March 28, 2001 (hereafter "relevant GR") ordains that compassionate appointment cannot be claimed by a dependent of an employee dying-in-harness, who is otherwise qualified, if such employee has more than two children. In the present case, the deceased employee had 4 (four) children during his lifetime; but since his second and third daughters were twins, they were counted as 1 (one) child. Based on the terms of the relevant GR, the petitioner's application was rejected.

6. In order to wriggle out of the rigours of the relevant GR, two contentions have been raised by Mr. Udane, learned advocate appearing for the petitioner. First is that the petitioner's brother, Atharva, has been given in adoption and, therefore, he cannot be counted as part of the family of the deceased employee. Secondly, the relevant GR being applicable only to employees of the State Government, its terms *ipso facto* are not applicable to the employees of MIDC; therefore, an illegality was committed in refusing the petitioner's prayer for compassionate appointment based on such GR.

7. We find both the contentions of Mr. Udane to be without substance.

8. The plea of adoption has been raised by the petitioner to paint the picture that the family of the deceased employee comprises of his widow and 3 (three) daughters

of whom the last 2 (two) are twins. However, nothing turns on such adoption even if it were in accordance with the extant provisions of law. The underlying object of the relevant GR is to ensure that the employees who are bound thereby, namely the Government employees, do not have more than 2 (two) children. If in case a third child is born to a Government employee, such an employee would not be entitled to certain benefits which includes an appointment on compassionate ground if such a situation were to arise. As is well-known, compassionate appointment being an exception to the rule of equal opportunity in the matter of public employment, it is well within the powers of the employer to attach reasonable conditions on the fulfillment whereof such benefit of compassionate appointment can be availed of. The condition that the relevant GR brought about being in the nature of a policy decision, which has led to rejection of the petitioner's application, is neither unreasonable nor violates any right of an employee. That apart, the disqualification for having an appointment on compassionate ground having occurred once the son, Atharva, was born to the deceased employee and the petitioner's mother, it is absolutely irrelevant for the purpose of the present case whether Atharva was given in adoption lawfully or whether giving Atharva in adoption could make the terms of the relevant GR inapplicable. We are of the view that the Government policy embodied in the relevant GR cannot be read in such a manner that it gives

scheming parties the chance to defeat it by taking recourse to adoption. Suffice it to record, the contingency on the occurrence whereof appointment on compassionate ground could be refused having set in with the birth of Atharva, we see no reason to hold the impugned rejection to be arbitrary or illegal.

9. Turning to the second contention, we have learnt from Ms. Gadre, learned advocate for the respondents that MIDC has no independent scheme or policy for appointment of dependents of employees dying-in-harness on compassionate ground and it is the policy of the Government, applicable to its employees, that is followed by MIDC. If Mr. Udane's submission were to be accepted that the relevant GR applies only to the employees of the State Government and not to employees of MIDC and, consequently, would also not apply to the petitioner, by applying the same logic it has to be held that the scheme or policy for compassionate appointment of the State Government does not apply to MIDC and, thus, MIDC is under no obligation to make appointment on compassionate ground. In such a case, the petitioner would have no semblance of a right to claim appointment on compassionate ground on the death of her father in view of the settled law that there can be no such appointment without a scheme/policy. Hence, this contention advanced by Mr. Udane is a self-defeating one and cannot be accepted; accordingly, it is overruled.

10. Having considered the materials that have been furnished by way of additional compilation by Ms. Gadre, we are of the considered opinion that the petitioner while seeking compassionate appointment tried to deceive MIDC and its officers. Any attempt on the part of an aspirant for public employment, which is deceitful, has to be sternly dealt with. This is a fit and proper case where the writ petition ought to be dismissed with exemplary costs. However, considering the submission of Mr. Udane that the petitioner has disabled siblings, we refrain from imposing costs.

11. As there is no merit in the writ petition, the same is liable to be and is hereby dismissed. No costs.

12. In view of dismissal of the writ petition, nothing survives for decision in the interim application and the same also stands dismissed.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)