

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

WRIT PETITION NO. 1678 OF 2021

Kolhapur Municipal Corporation,
through the Commissioner, Kolhapur ..Petitioner

v/s.

Mahanagar Karmachari Sangh,
Bhausingi Road, Kolhapur,
through the President ..Respondents

**WITH
WRIT PETITION NO. 7448 OF 2022**

Kolhapur Municipal Corporation,
through the Commissioner, Kolhapur ..Petitioner

v/s.

Mahanagar Karmachari Sangh,
Bhausingi Road, Kolhapur,
through the President ..Respondents

**WITH
WRIT PETITION NO. 7437 OF 2022**

Kolhapur Municipal Corporation,
through the Commissioner, Kolhapur ..Petitioner

v/s.

Mahanagar Karmachari Sangh,
Bhausingi Road, Kolhapur
through the President ..Respondents

Mr. Abhijit Adagule for the Petitioner.
Mr. M.S.Topkar i/b. Saurabh Mandlik for the Respondents.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 8th DECEMBER, 2022.**

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ORAL JUDGMENT.

1. With Consent heard finally at the stage of admission.
2. The challenge in these petitions is to the order of the Industrial Court allowing the complaints filed by the Respondents under Section 28(1) r/w. Item 5, 9 and 10 of Schedule IV of MRTU & PULP Act, 1971 and directing Petitioner Corporation to give appointments on compassionate ground.
3. Heard Mr.Adagule, learned Counsel for the Petitioner, and Smt. Shashikala Kishor Nalage for the Respondents. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.
4. The Respondent Union had filed complaints under Section 28(1) of the MRTU & PULP Act alleging that the Petitioner Corporation had refused to appoint the dependents of the deceased employees on compassionate ground. The Petitioner contested the said application on the ground that the refusal did not amount to Unfair Labour Practice as the same was in consonance with the G.R. dated 22.08.2005. The Labour Court allowed the application and directed the Petitioner Corporation to appoint the dependents of the concerned deceased

employees on compassionate within a specified period.

5. The question for consideration is whether the Petitioner-Corporation has indulged in unfair labour practice by refusing to appoint the dependents of the concerned deceased employees on compassionate ground. The Apex Court, in ***Fertilizers and Chemicals Travancore Ltd. & Ors. vs. Anusree K.B., 2022 SCC Online 1331***, has referred to and considered the previous decisions on the issue of appointment on compassionate ground and has held thus:

“15. ... In the recent decision, this Court in the case of Director of Treasuries in Karnataka v. V. Somyashree, 2021 SCC OnLine SC 704, had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this Court in N.C. Santhosh v. State of Karnataka, (2020) 7 SCC 617, this Court has summarised the principle governing the grant of appointment on compassionate ground as under:—

(i) that the compassionate appointment is an exception to the general rule;

(ii) that no aspirant has a right to compassionate appointment;

(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy

and/or satisfaction of the eligibility criteria as per the policy;

(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

16. As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

17. In the case of State of Himachal Pradesh v. Shashi Kumar reported in (2019) 3 SCC 653, this Court had an occasion to consider the object and purpose of appointment on compassionate ground and considered the decision of this Court in the case of Govind Prakash Verma v. LIC, reported in (2005) 10 SCC 289, in paras 21 and 26, it is observed and held as under:—

“21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138]. The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138] have been subsequently followed in a

consistent line of precedents in this Court. These principles are encapsulated in the following extract : (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138], SCC pp. 139-40, para 2)

“2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the SCC Online Web Edition, © 2022 EBC Publishing Pvt. Ltd. rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public 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 a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

26. The judgment of a Bench of two Judges in *Mumtaz Yunus Mulani v. State of Maharashtra* [(2008) 11 SCC 384] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would

need to be evaluated on the basis of the provisions contained in the scheme. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.”

18. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.”

6. It is thus, well settled that appointment on compassionate ground is not as of right but is a concession in favour of dependent of an employee to enable him to tide over financial crises due to sudden death of the bread earner. The G.R. dated 22.8.2005 issued by the State of Maharashtra provides for reservation of 5% of the vacancies in Class-C

and D categories to be filled by appointment on compassionate ground. It is stated that by G.R. dated 01/03/2014 the limit of 5% has been increased to 10% per year. The time limit for filing such application, as per the G.R., is one year from the date of death of the employee with further powers to condone the delay of two years. The G.R. prescribes the upper age limit of 40 years for appointment on compassionate grounds and stipulates that the names of the candidates, who have crossed the said age limit, should be deleted from the wait list.

7. In the instant case, Sunil Patil, son of the deceased Shalabai, Shashikala, widow of the deceased Kishore Nalage, Alka Mali, the widow of Anil Mali and Smt. Anita Dhavale, the widow of Mahadev Dhavale had filed applications for appointment on compassionate ground. Though their names were entered in the wait list, their applications came to be rejected since they crossed the age of 40 years. It is not the case of the Respondents that these Applicants were superseded or that the applicants were within the age limit prescribed under the G.R. The decision to reject the application is neither arbitrary nor malafide and can not be construed as unfair labour practice.

8. It is to be noted said Kishore Nalage had expired on 28/04/2008. the application for compassionate appointment made by his wife Shashikala was rejected on 01/09/2018 for having crossed the upper age

limit of 40 years. It is only after the rejection of this application that said Shashikala had requested to appoint her son-Aniket on compassionate ground. The request for appointment of said Aniket on compassionate ground is much beyond the time prescribed under the G.R. As noted earlier, the object of appointment on compassionate ground is not as a right but only to mitigate the hardship caused to the family on account of the unexpected death of the employee. In the instant case, the Respondent has not been able to demonstrate that the decision of the Petitioner to reject the application for appointment on compassionate ground is arbitrary or malafide or is contrary to the objective and purpose of the scheme. Hence, the mere rejection of the application would not constitute unfair labour practice.

9. Under the circumstances, the Industrial Court was not justified in declaring that the Petitioner was engaged in unfair labour practice and further in directing the Petitioner to appoint Sunil Anand Patil, Smt. Shashikal Nalage or her son Aniket Nalage, Alka Mali and Ajinkya Mahadev Dhavale on compassionate grounds. The impugned order is bad in law and cannot be sustained. Hence, the following order:

- . The Petitions are allowed.
- . The impugned orders passed by the learned Member, Industrial Court, Kolhapur, (i) order dated 18.02.2020 in Complaint (ULP) No.69 of 2016, (ii) Order dated 19.12.2019 in

Complaint (ULP) No. 177 of 2016 and (iii) Order dated 18.12.2019 in Complaint (ULP) No. 29 of 2014 are quashed and set aside. Consequently, the complaints stand dismissed.

(ANUJA PRABHUDESSAI, J.)