

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 704 OF 2019

Dilip Sukhraj Jaiswar ... **Petitioner**
Versus
Mumbai Port Trust ... **Respondent**

Mr. Jamshed Ansari, Advocate for the Petitioner.

Mr. Rakesh Singh a/w. Ms. Heena Shaikh i/b. M.V.Kini & Co.,
Advocate for the Respondent No.1.

**CORAM: S.V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATED : OCTOBER 11, 2022

P.C.

1. The petitioner had applied for appointment on compassionate ground. The said application is rejected.

2. The learned Advocate for the petitioner submits that the father of the petitioner was in service with respondent No.1 as a 'Dock Labour'. In 1995, he died in an accident. At that time, the petitioner was minor. The petitioner attained the age of majority in the year 2004. In the year 2007, the family pension was sanctioned, however, the same was discontinued in the year 2011. The petitioner applied for appointment on compassionate ground in the year 2015. The petitioner was directed to submit the documents. The petitioner complied with the same, however, subsequently, the application has been negated on altogether erroneous grounds. The learned Counsel for the petitioner submits that vacancy exists with respondent No.1. The father of the

petitioner died while in service. 5% posts are to be filled in by appointment on compassionate ground. The claim of the respondent that as the father of the petitioner did not die while working, the petitioner is not entitled for appointment on compassionate ground is erroneous.

3. The learned Counsel for respondent submits that 11 years after the petitioner attained the majority, the application for appointment on compassionate ground is made. The family pension is received by the family of the petitioner. The learned Counsel for the respondent submits that the father of petitioner died by an accident and not while on duty. On that ground, the petitioner is not entitled for appointment on compassionate ground.

4. We cannot comprehend the argument of learned Counsel for respondent that father of the petitioner died in an accident and not while performing his duty with respondent No.1, the petitioner is not entitled to be appointed on compassionate ground. At the time the father of the petitioner died, he was in employment with respondent No.1. In that event, the petitioner had right to apply for appointment on compassionate ground.

5. The purpose of appointment on compassionate ground is to provide immediate succor to the family of the deceased dying in harness. With the delay and passage of time, the claim of the appointment on compassionate ground would stand defeated.

6. It would appear that the father of the petitioner died in the year 1995. The petitioner on the said date was minor. The petitioner attained the age of majority in the year 2004.

The petitioner could have applied upon attaining the age of majority seeking appointment on compassionate ground, however, for 11 years the petitioner did not take any steps and it is only in the year 2015, for the first time, the petitioner applied for appointment on compassionate ground. The family pension was received by the family of the petitioner in the year 2007.

7. The grant of family pension may not be the ground to negate the claim for appointment on compassionate ground. However, the fact that for 11 years upon attaining the age of majority, the petitioner did not apply seeking appointment on compassionate ground itself disentitles the petitioner from claiming the benefit of compassionate appointment.

8. The compassionate appointed is not a vested right. Attending facts and circumstances are required to be considered while dealing with the application for appointment on compassionate ground. The long slumber of 11 years in making an application certainly would disentitle the petitioner from claiming appointment on compassionate ground. Even if it is assumed that the time for making application may not be considered with mathematical precision, the application has to be made within reasonable time.

9. In light of the aforesaid, we are not inclined to entertain the petition.

10. The writ petition is disposed of. No costs.

(R. N. LADDHA, J.)

(S.V. GANGAPURWALA, J.)