

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.4611 OF 2016

1. The State of Maharashtra,
through its Secretary,
Ministry of Agriculture,
Mantralaya, Mumbai
2. The Joint Divisional Director of Agriculture,
Nagpur Division, Nagpur.
3. The Superintendent Agriculture Officer,
Gadchiroli,
Tah. & District Gadchiroli.
4. The Soil Survey and Soil Testing Officer,
Gadchiroli,
Tah. & District Gadchiroli.

...PETITIONERS

VERSUS

1. Smt. Nalutai Ganpatrao Jaunjalkar,
Aged about 41 years,
 2. Shri Shubham Ganpatrao Jaunjalkar,
Aged about 19 years,
- Both R/o. Kasturba Ward,
Desaiganj, District Gadchiroli

...RESPONDENTS

Ms N.P. Mehta, A.G.P. for the petitioners.
Shri A.P. Sadavarte, Advocate for the respondents.

**CORAM : A.S. CHANDURKAR AND
URMILA JOSHI-PHALKE, JJ.**

DATE : AUGUST 05, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard finally with the consent of learned Counsel for the parties.

2. The order passed by the Maharashtra Administrative Tribunal, Nagpur in Original Application No.511/2014 by which the petitioners are directed to appoint respondent No.2 on compassionate ground within 10 weeks is under challenge in the present writ petition.

3. Shri Ganpatrao Jaunjalkar was serving as an Agriculture Assistant with petitioner No.4 - the Soil Survey and Soil Testing Officer, Gadchiroli. He died on 09/05/2003 while in service. Respondent No.1 is the wife and respondent No.2 is the son of deceased Ganpatrao Jaunjalkar. Respondent No.1-wife applied for appointment on 20/10/2003 on compassionate ground by forwarding the application along with the documents to petitioner No.4. The petitioner No.4 had forwarded the said proposal on 05/12/2003 through petitioner No.3 - the Superintendent Agriculture Officer, Gadchiroli to petitioner No.2 - the Joint Divisional Director of Agriculture, Nagpur Division, Nagpur. As per the contention of the petitioners, after scrutiny of the said proposal by petitioner No.2, the documents submitted by the respondents were not as per the required norms and respondent No.1 was asked to supply

the necessary documents. The respondents failed to forward all the required documents, therefore, again petitioner No.4 called the respondents to file an affidavit stating that none of her family members was employed with the Government Department. The respondent No.1 had submitted the said affidavit and the proposal was forwarded in accordance with the guidelines issued by the Government of Maharashtra from time to time. The proposal by removing all the objections was submitted by petitioner No.3 to petitioner No.2 on 24/10/2005 and requested the Collector, Gadchiroli to include the name of respondent No.1 in the waiting list of the candidates who are to be considered for the appointment on compassionate ground. Accordingly, the name of respondent No.1 was included in the list of the candidates at serial No.68. In the meantime, General Administrative Department of Government of Maharashtra issued Government Resolution dated 22/08/2005 which reflects that as per the policy of the Government a person who has attained the age of 40 years cannot be appointed on compassionate ground and their names are to be removed from the waiting list of the candidates to be appointed on compassionate ground as the said person becomes age barred for the employment. It is further the contention of the petitioners that as respondent No.1 whose birth date is 18/03/1969 attained the age of 40 years, her name was removed from the waiting list. Respondent No.2 had also submitted the

application for appointment on compassionate ground. Said proposal was forwarded to petitioner No.2 on 28/10/2009. Respondent No.1 has also consented for the appointment of respondent No.2 i.e. her son in her place. As there is no such provision to transfer or interchange the name of the person who earlier claims appointment on compassionate ground as a legal representative of the deceased and whose name is already included in the waiting list on compassionate appointment and, therefore, respondent No.2 is not entitled to claim appointment on compassionate ground. The Maharashtra Administrative Tribunal had not considered the said aspect and directed the petitioners to give appointment to respondent No.2 on compassionate ground. The order passed by the Tribunal is illegal and liable to be set aside.

4. In response to the notice, respondent appeared and opposed the application on the ground that the name of respondent No.1 was already included in the waiting list. Respondent No.1 approached to the petitioners in time after the death of her husband on 20/10/2003 i.e. within five months. The petitioner No.4 has forwarded the said proposal on 05/12/2003 as there was compliance by respondent No.1 as per the requirement. The petitioners have kept the proposal of respondent No.1 pending without any reason and subsequently deleted the name from the waiting list. The action of the petitioners is arbitrary, illegal and,

therefore, the Tribunal had directed the petitioners to provide the appointment to respondent No.2. The writ petition has no merits and is liable to be dismissed.

5. Heard Ms N.P. Mehta, learned Assistant Government Pleader for the petitioners. She reiterated the contentions as per the petition to support her contention and she relied upon the Government Resolution dated 22/08/2005 Clause 2(2) which states that the candidates whose names are entered in the waiting list if completes the age of 40 years before their appointment on compassionate ground their names are to be deleted from the waiting list. She further relied upon the Government Resolution dated 06/12/2010 by which the age limit of the candidates who are to be considered for the compassionate appointment was increased from 40 to 45 years. She submitted that as the application of respondent No.1 was prior to 06/12/2010, therefore, the Government Resolution dated 22/08/2005 is applicable and as she had completed 40 years of her age, her name was deleted from the waiting list. She further submitted that the appointment on compassionate ground is not a right of the said person. The appointment should be given as per the prevalent conditions. Subsequent resolutions are not applicable, therefore, the directions of the Tribunal are illegal and against the law and is liable to be set aside.

6. In support of her contention, she placed reliance on ***MGB Gramin Bank Vs. Chakrawarti Singh (2014) 13 SCC 583*** wherein in paragraph No.6 it is held by the Hon'ble Apex Court that every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. She also relied upon the judgment passed by this Court in the ***Writ Petition No.7602/2018 (Ravi s/o Suresh Waatkar Vs. State of Mah. & ors.) decided on 04/08/2022.***

7. On the other hand, Shri A.P. Sadavarte, learned Counsel for the respondents supported the order passed by the Tribunal. He submitted that the employee Shri Ganpatrao Jaunjalkar expired on 09/05/2003. Immediately, respondent No.1 applied for the appointment on compassionate ground on 20/10/2003. As there was compliance as per the requirement, the proposal was forwarded on 05/12/2003 by petitioner No.4 through petitioner No.3 to petitioner No.2.

8. He invited our attention towards the communication dated

20/10/2003 which shows that respondent No.1 submitted an affidavit on 10/10/2003 itself contending that after the death of her husband she is not doing any business or profession or any Government or Private service and her husband was not holding any agricultural land.

9. He further submitted that as per the communication dated 09/12/2003 again respondent No.1 complied on 12/12/2003 by submitting affidavit stating that she is the wife of deceased Ganpatrao Jaunjalkar and her maiden name was Nalutai Bakaramji Karambe. Thus, the communication which is on record sufficiently shows that respondent No.1 had complied all the objections raised by the petitioners. The communication of petitioner No.4 to petitioner No.2 dated 24/12/2003 shows that respondent No.1 had complied all the objections and, therefore, the proposal was forwarded. Petitioner No.4 further requested petitioner No.1 to consider the said proposal. He submitted that all these communications are sufficiently shows that there was compliance and, therefore, the name of respondent No.1 is taken in the waiting list. He has also placed reliance on the Government Resolution dated 23/04/2008 which is reproduced below :

“अनुकंपा तत्वावर नियुक्तीसाठी दिनांक 22.8.2005 पूर्वी प्रतीक्षासूचीत असलेल्या पात्र उमेदवारांना शासन सेवेत नियुक्ती देण्यासंदर्भात शासनाने आता खालीलप्रमाणे निर्णय घेतला आहे.

अ) शासकीय कार्यालयातील आस्थापनेवर गट 'क' व 'ड' मध्ये

अनुकंपा तत्वावर नियुक्तीकरिता तयार करण्यात आलेल्या प्रतीक्षासूचीमधील, दि. 22.8.2005 पूर्वीच्या उमेदवारांना दि. 22.8.2005 च्या शासन निर्णयातील परिच्छेद 1 (ओ) मध्ये विहित केलेली रिक्त पदांच्या 5% ची मर्यादा लागू राहाणार नाही.

ब) प्रतीक्षासूचीवर असलेल्या दि. 22.8.2005 पूर्वीच्या उमेदवारांना शासकीय कार्यालयात रिक्त असलेल्या/होणाऱ्या पदांवर अनुकंपा तत्वावर नियुक्ती, या आदेशाच्या दिनांकापासून तीन वर्षात टप्प्याटप्प्याने देण्यात यावी. तीन वर्षात टप्प्या-टप्प्याने नियुक्ती करताना दि. 22.8.2005 पूर्वीच्या प्रतीक्षायादीतील उमेदवारांपैकी 50% उमेदवारांची नियुक्ती पहिल्यावर्षी, 25% उमेदवारांची नियुक्ती दुसऱ्या वर्षी व उर्वरित 25% उमेदवारांची नियुक्ती तिसऱ्या वर्षी करण्यात यावी.”

10. Thus, he submitted that the application of respondent No.1 was prior to 20/08/2005 which was not considered by the petitioners as per the said Government Resolution. The order passed by the Tribunal clearly shows that the Tribunal has considered all these aspects and observed that respondent No.1 had applied within five months of her husband's death. She was informed about submission of certain documents and she had supplied the same. From the extract of the register of the waiting list of the candidates it starts with the candidate at serial No.42 and his date of application was 01/01/2004 and the last candidate in the list is at serial No.93 and his date of application was 28/06/2007. Hence, it is obvious that the applicant's application been registered by ignoring that she had been late in submitting the above affidavit she too would have been appointed. The Tribunal had allowed the said application observing that the policy of compassionate appointment has no provision for substitution once the name of the

beneficiary is accepted and registered in the wait list and directed to give appointment to applicant No.1. He submitted that the order passed by the Tribunal is proper and legal one and no interference is called for.

11. Heard both the sides and perused the record.

12. The undisputed factors in this case are as under:

(i) The husband of respondent No.1 namely Ganpatrao Jaunjalkar who was working as an Agriculture Assistant and was in a permanent service and was died on 09/05/2003.

(ii) Respondent No.1 who was born on 18/03/1969 filed an application dated 20/10/2003 as per the Government Resolution for seeking compassionate appointment in place of her husband.

(iii) By the Government Resolutions dated 22/08/2005 and 23/04/2008, the conditions applicable for compassionate appointments were amended by the State.

(iv) As respondent No.1 completed 40 years of age and, therefore, her name was removed from the waiting list.

(v) The petitioners relied upon the Government Resolution dated 23/04/2008 by which, the age limit for

appointing a candidate on compassionate basis was 40 years and deleted the name of respondent No.1 from the waiting list solely on the ground that she had completed 40 years of age.

(vi) The Government introduced another Resolution dated 06/12/2010 by which the age for appointment on compassionate grounds was increased to 45 years.

(vii) On the basis of the same, the respondent preferred Original Application No.05/01/2014 before the Maharashtra Administrative Tribunal, Nagpur praying for a direction to the petitioners to re-include the name of respondent No.1 in the waiting list.

(viii) Said Original Application was allowed on 02/02/2016 by which the Tribunal had directed to give appointment to respondent No.1 on compassionate ground.

(ix) Said order is challenged by the petitioners in the present writ petition.

13. The petitioners have challenged the order of the Maharashtra Administrative Tribunal mainly on the ground that as

respondent No.1 completed 40 years of age and as per the Government Resolution dated 23/04/2008 the name of the candidates who completed the age of 40 years is to be deleted. The petitioners also claimed that the appointment has to be given as per the existing policy. The subsequent policy which was introduced by the Government Resolution dated 06/12/2010 by which the age of the candidate for appointment on compassionate ground was increased is not applicable, therefore, the order passed by the Tribunal is illegal and liable to be set aside.

14. It is well settled that the appointment of compassionate ground has to be made in terms of the scheme and not otherwise. The whole object of granting compassionate employment by an employer being intended to enable the family members of a deceased to come over the sudden financial crisis, appointment on compassionate ground should be made immediately to redeem the family in distress. It is also well settled that no one can claim compassionate appointment by way of inheritance. Compassionate appointment is a need-based concept which permits a side-door entry in service; therefore, the policy behind it has to be given strict interpretation. It is held in the catena of decisions that the object of compassionate appointment is to provide immediate financial relief and support to the family which has lost its bread winner

and to enable such family to lead an honourable life.

15. In the light of the above well settled principle it is to be seen that whether the order passed by the Tribunal is sustainable or not?

16. As it is observed that the employee i.e. the husband of respondent No.1 who was serving as an Agriculture Assistant expired on 09/05/2003. Respondent No.1 had applied for the appointment on compassionate ground on 20/10/2003. The Death Certificate of the deceased-employee is on record. The copy of the application is also on record which shows that it was filed on 20/10/2003. It is apparent that respondent No.1 had not only filed an application in a handwritten form but she had also filed an application in the format i.e. Schedule-B along with the affidavit. The recitals of the affidavit dated 10/10/2003 shows that she mentioned in the affidavit that after the death of her husband she was not doing any business or profession or any Government or Private service. Her husband was also not holding any agricultural land. Her children are minor and she had no other source of income. The communication dated 05/12/2003 shows that the said proposal was forwarded by petitioner No.4 to petitioner No.2 through petitioner No.3 along with all the necessary documents. Petitioner No.2 made a communication to petitioner No.4 on 09/12/2003 and asked petitioner

No.4 to obtain an affidavit from respondent No.1 regarding her maiden name. Accordingly, said communication was informed to respondent No.1 by letter dated 16/12/2003. The affidavit dated 12/12/2003 which is on record shows that respondent No.1 had submitted the said affidavit to the petitioners dated 12/12/2003 wherein she had mentioned that her maiden name is Nalutai Bakaramji Karambe. The forwarding letter dated 16/12/2003 by petitioner No.4 to petitioner No.2 mentioning that respondent No.1 had complied all the objections and, therefore, again he is forwarding the said proposal for the consideration. The communication dated 24/12/2003 by petitioner No.4 to petitioner No.2 also shows that respondent No.1 had already complied all the objections by submitting necessary affidavit, certificates, educational qualification, income certificates, etc.

17. Though respondent No.1 had already submitted an affidavit that she or none of her family members are in the Government service thereafter also petitioner No.4 called upon her to file an affidavit. She again filed the said affidavit on 05/10/2005. Thus from the entire communication it reveals that though the affidavit in respect of the contention that she or her family members are not in a Government service is submitted by her again the said affidavit was asked by the petitioners. Subsequently, her name was taken in a waiting list on

26/10/2005. It appears that though she had complied all the compliance in 2003 itself, her name was not taken in the waiting list immediately. On 25/04/2012, she filed an application to substitute the name of her son. She also preferred various representations to the petitioners as her name was deleted from the waiting list.

18. Learned Counsel for the respondents vehemently submitted that though the petitioners had complied all the compliances and as per the Government Resolution she was to be appointed by the petitioners but belatedly the petitioners have entered her name in the waiting list. Admittedly, there is no explanation from the petitioners why her name was not included in the waiting list though she had complied with all the compliances. The communication of respondent No.4 dated 24/12/2003 itself shows that respondent No.1 had complied all the compliances. In support of his contention he placed reliance on ***Supriya Suresh Patil Vs. The State of Maharashtra and ors. in Civil Appeal No.5216/2008 along with Special Leave Petition No.4420/2018*** wherein the Hon'ble Apex Court held that the main reason for rejecting the case of the appellant was that the family had managed to survive for over ten years and, therefore, there was no immediate necessity. It was observed that this cannot be a major reason for rejection. Whether the family pulled on begging or borrowing also should have been one consideration. It is

held by the Hon'ble Apex Court that in the peculiar facts of the case, the daughter should be considered for compassionate appointment. He further relied upon ***Smt. Sushma Gosain and ors. Vs. Union of India and ors. AIR 1989 SC 1976*** wherein it is held that the purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant. He further relied upon the decision of the Aurangabad Bench of this Court in ***Writ Petition No.8460/2016 (The State of Mah. & ors. Vs. Sanjay Jagannath Viste)*** decided on 10/08/2016 wherein it is held that it is settled law that the purpose of compassionate appointment is to render succour and immediate relief to a family, for reducing its hardships and to ensure that the unfortunate family would survive through the earnings on account of compassionate appointments. Such policies are introduced by the State Government considering the socio economic structure. Though it is concluded that appointment on compassionate basis is not a right, yet the conduct of the State in depriving eligible candidates by keeping them on the wait list for years would in fact, cause disservice to the family of the deceased employee. It is further held that the Court cannot be a passive onlooker in the face

of the violation of the rights of an individual and natural justice. Lastly, he relied upon *Yogesh Nagraoji Ugale Vs. State of Maharashtra and ors. in Civil Appeal No.6626/2019 along with SLP No.3500/2015* wherein it is held that the ban on the recruitment cannot be a ground to appoint the candidates on the compassionate ground.

19. Admittedly, in the present case, the application was filed for considering respondent No.1 on compassionate appointment within limitation period i.e. on 20/10/2003. It is a matter of record that initially the said proposal was forwarded on 05/12/2003 as petitioner No.4 made communication to petitioner No.2. Petitioner No.2 vide communication asked for the compliance. Respondent No.1 complied the said compliance immediately on 12/12/2003 itself. The ground raised by the petitioners that though respondent No.1 was asked to file an affidavit that neither she nor any of her family members are employed with the Government department. She had not submitted the said affidavit and, therefore, she was not appointed and as she had attained the age of 40 years, her name was deleted. Said submission is not sustainable in the light of the documents on record which shows that on 15/10/2003 itself she had filed an affidavit contending that behind her husband she was surviving with her three minor children. She was not doing any business or profession or any Government or Private

service and her husband is also not holding any agricultural land. The communication dated 24/12/2003 by petitioner No.4 to petitioner No.2 is sufficient to show that respondent No.1 had complied with all the objections and, therefore, petitioner No.4 had forwarded said proposal to petitioner No.2. Thus, it is apparent that the petitioners sat over the said proposal and in the year 2005 i.e. on 26/10/2005, the name of respondent No.1 was entered in the waiting list. Though respondent No.1 had complied all the objections and the proposal was forwarded to petitioner No.2 on 24/12/2003 itself why the name of respondent No.1 was not entered in the waiting list is not explained by the petitioners. As per the Government Resolution dated 23/04/2008, all the applications which was received prior to 22/08/2005 are to be considered without observing the percentage of 5% of the vacant post. It was directed that the candidates who are on the waiting list prior to 22/08/2005 all the candidates should be given appointment in three years step by step. It is apparent that said Government Resolution is not followed by the petitioners. Belatedly, the name of respondent No.1 was entered in the waiting list but since she had completed the age of 40 years, instantly her name was removed from the said waiting list. As observed by this Court Aurangabad Bench in Writ Petition No.8460/2016 (supra) such a conduct of the petitioners cannot be appreciated and deserves to be deprecated. The learned Presiding Officer of the Tribunal observed all

these facts in the judgment, the respondent had applied within five months after her husband's death. It is apparent that she declared that all her three children were minor and there was no other dependent in her family. She subsequently stated that she was not doing any business or profession or any Government or Private service, she had submitted the said affidavit on 10/10/2003 itself. Thus, it is obvious that respondent No.1 had complied all the requirements to consider her for the appointment on compassionate ground. After the said compliance, petitioners ought to have considered her request and entered her name in the waiting list. The communication of petitioner No.4 itself is sufficient to show that she had complied all the requirements in 2003 itself and, therefore, vide communication dated 24/12/2003 her proposal was forwarded by mentioning that respondent No.1 had complied all the objections. In contrary to the said communication, petitioners have come with a case that as there was no compliance her name was not entered earlier in a waiting list, which is not sustainable.

20. As such the petitioners had not considered the application within time and in the meanwhile she had completed the age of 40 years for which she cannot be blamed for. The petitioners are not entitled to remove her name from the waiting list as she had completed the age of 40 years. It is apparent that it is the petitioners due to whose fault the

proposal and appointment of the respondents was delayed. The petitioners are responsible for keeping the list pending and for deleting the name of respondent No.1, hence the writ petition deserves to be dismissed. In the result, we proceed to pass following order :

ORDER

The writ petition is dismissed. No costs.

21. Rule stands discharged.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

**Divya*