

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

Writ Petition No.5379 of 2022

Anagha Vinod Gopal,
Aged about 31 years,
Occ.: Education,
R/o Plot No.695,
New Subhedar Layout,
Nagpur-24.

... Petitioner

Versus

1. State of Maharashtra,
through its Secretary,
Law & Judiciary Department,
Mantralaya,
Mumbai-32.

2. District & Sessions Judge, Wardha.

3. The Registrar (Personal),
High Court Appellate Side,
Mumbai High Court,
Mumbai.

... Respondents

Shri N.N. Thengre, Advocate for Petitioner.

Shri K.L. Dharmadhikari, Assistant Government Pleader for
Respondent No.1.

Shri Firdos Mirza, Advocate for Respondent Nos.2 and 3.

CORAM : SUNIL B. SHUKRE & G.A. SANAP, JJ.

DATE : 16th SEPTEMBER, 2022

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

1. Rule. Rule made returnable forthwith.

2. Shri K.L. Dharmadhikari, learned counsel for respondent
No.1; and Shri Firdos Mirza, learned counsel for respondent Nos.2

and 3, waive service of notice.

3. Heard finally by consent of the learned counsel appearing for the parties.

4. Late Shri Vinod Namdeorao Gopal, working on the establishment of respondent No.2, died in harness on 13-4-2006. The petitioner, who is the daughter of the deceased, had made an application on 26-8-2008 seeking appointment as a Clerk on compassionate basis. Today, the petitioner is 31 years' old and when she made an application, she was about 17 years' old, when she sought appointment on compassionate basis. At that time, the petitioner did not disclose her age/date of birth. But, broadly speaking, it can be said that about one year after the petitioner making an application seeking appointment on compassionate basis, she had turned major. So, it can be reasonably presumed that from 1-9-2009, the petitioner was major and was eligible to obtain employment in Government Department. From the averments made in the petition, it is seen that the petitioner had made several applications after 2009 seeking appointment on compassionate basis, but of no avail. From the year 2009 till the date on which the petitioner was informed of the rejection of her application, which was dated 7-6-2022, a period of about 12 years passed and the family of the petitioner managed to

survive.

5. The law of compassionate appointment is well-settled. The compassionate appointment is given with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the breadwinner. Such appointment is made by giving a go-bye to the principle of equality and open competition, as an exception to the rule of equality and equal opportunity of employment to be made available to equally situated persons under Articles 14 and 16 of the Constitution of India. Therefore, unless and until it is seen that the compassionate appointment sought by a candidate is for the purpose of enabling the family tide over the financial crises, no such appointment can be allowed to be made as an exception to the principle of equality and open competition under Articles 14 and 16 of the Constitution of India. This is the view taken by the Apex Court in the case of *Local Administration Department Vs. M. Selvanayagam alias Kumaravelu*, reported in (2011) 13 SCC 42, which is reiterated in Civil Appeal No.5944 of 2022 arising from SLP (Civil) No.9933 of 2022, in the matter of *Ahmednagar Mahanagar Palika Vs. Ahmednagar Mahanagar Palika Kamgar Union*, decided on 5-9-2022. This principle has been followed by this Court in several of its judgments, including the one rendered in the case of *Snehal Chandrakant Shetye and another Vs.*

State of Maharashtra and others, reported in 2018(6) *Mh.L.J.* 232.

6. In the instant case, the time of about 12 years has lapsed after the untimely death of the breadwinner of the family and yet the family has managed to survive. In fact, from the own admission of the petitioner, it is seen that the mother of the petitioner is getting her monthly pension of Rs.9,700/- and has also received an amount of Rs.3,80,591/- towards terminal benefits. So, it is not the case of the petitioner that her entire family will come on street. Therefore, the law propounded by the Apex Court in the case of *Local Administration Department Vs. M. Selvanayagam alias Kumaravelu* (supra) is squarely applicable to the present case and accordingly, we find that the petitioner is not entitled to be provided compassionate appointment by making an exception to the rule of equality under Articles 14 and 16 of the Constitution of India.

7. Apart from what is stated above, we find that even on the other ground, as pointed out by Shri Firdos Mirza, learned counsel for respondent Nos.2 and 3, the petitioner is not entitled to even agitate this issue before this Court at this stage. The application of the mother of the petitioner, named Kalpana Vinod Gopal, made earlier for grant of compassionate appointment was rejected by the High Court by its letter dated 16-7-2008 and this fact is well known to the petitioner as

the letter dated 26-8-2008 (on page 17 of the petition) addressed by the mother of the petitioner to the District and Sessions Judge, Wardha, mentioning this fact is annexed to this petition. The rejection of the application of the mother of the petitioner by the High Court was informed and, therefore, now the petitioner, who is the daughter of said Kalpana Vinod Gopal, cannot question the refusal of the High Court to grant compassionate appointment to her, after about a period of 12 years.

8. In the result, we find that this petition cannot be entertained and we dismiss the same summarily.

9. Rule is discharged. No costs.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)

Lanjewar