

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

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WRIT PETITION NO. 5078 /2018

1) Smt. Rekha wd/o Gajanan Nandanwar
Aged about 46 years, occu: Nil

2) Ku. Manisha d/o Gajanan Nandanwar
Aged about 23 years, occu: student

Both R/o Rangarhattipura, Balapur
Post and Taluka : Balapur, Dist. Akola.

..PETITIONERS

v e r s u s

1. The State of Maharashtra
Through its Secretary
Municipal Administration Department
Mantralaya, Mumbai-400 032.

2) The Commissioner and Director of
Municipal Administration
Office of Directorate of Municipal Administration
Government Building, 2nd floor,
Sir Pochkhanwala Marg, Warli, Mumbai-400 032.

3) Commissioner and Regional Director
Municipal Administration,
Near Divisional Commissioner Office
Camp Road, Amravati, Dist. Amravati.

4) The Collector, Akola.
Collector compound, Akola Dist. Akola.

5) Chief Officer
Nagar Parishad, Balapur, Dist. Akola.

.. RESPONDENTS

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Mr A. P. Sadavarte, Advocate for petitioners
Ms. N.P. Mehta AGP for respondent nos. 1 to 4
Respondent no.5 served.
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CORAM: SUNIL B. SHUKRE &
ANIL L. PANSARE, JJ
DATED : 11th October, 2022.

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

1. Heard learned counsel for the petitioners and the learned AGP for respondent nos.1 to 4.
2. **Rule.** Rule is made returnable forthwith. Heard finally with consent.
3. The petitioner no.2 is seeking an appointment on compassionate basis on the ground that her father-Gajanan died in harness way back in the year 2010.
4. Mr. Sadavarte, learned counsel for the petitioners submits that initially petitioner no.1-mother of petitioner no.2, had applied for such an appointment, but appointment was not offered to her before she turned over-age. He further submits that she withdrew her application and now it is her daughter, being the other legal heir who is entitled to be granted compassionate appointment.
5. Ms.Mehta, learned AGP for the respondents 1 to 4 submits that law on the question is well settled. According to her, now

petitioner no.2 cannot be granted compassionate appointment as a considerable time has elapsed after the death of sole earning family member of the petitioners. She further submits that even otherwise, the compassionate appointment is an exception to the normal method of recruitment, and it is provided for compassionate reasons upon the death of employee who dies in harness without any kind of security whatsoever. She further submits that compassionate appointment after a lapse of about 12 years since the death of the employee would be contrary to law and would also be violative of Article 14 of the Constitution of India. She has placed reliance upon the law laid down by the Hon'ble Apex Court, in the case of Ahmednagar Mahanagar Palika v. Ahmednagar Mahanagar Palika Kamgar Union in Civil Appeal No. 5944/2022 and also the full Bench judgment of this Court, in the case of Om Bhagwanrao Anjanwad v. State of Maharashtra, reported in 2022 (4) Mh.L.J. 723.

6. The learned counsel for the petitioners submits that while there is no dispute about the general principles of law as propounded in the case of Ahmednagar Mahanagar Palika (supra), this case stands on a foundation of different facts and, therefore, this case would be governed by the view taken by the coordinate Bench of this court at Nagpur in Writ Petition No. 6281/2017 (*Roshan Kale vs. State*)

decided on 05.02.2020. He submits that in the case *Roshan Kale (supra)*, the Division Bench found that one associate professor had failed to perform his duty of informing one of petitioners therein the fact that the petitioner was eligible for compassionate appointment. According to the learned counsel for the petitioners, in the present case also, the respondent no.5 has failed to provide the compassionate appointment within time and, therefore, now the right of the petitioner no.2 to seek compassionate appointment cannot be denied to her and this way the view taken in *Roshan Kale's* case is applicable to the facts of the instant case.

7. Unfortunately, inspite of due service of notice on the Chief Officer, Nagar Panchayat, Balapur, nobody has remained present for respondent no.5. The absence of Chief Officer, Nagar Panchyat, Balapur before this court, of course, has not come as a surprise to this Court, the reason being that this Court has noted in plethora of cases where the local authorities, such as Nagar Parishads, Municipal Councils, Nagar Panchayats and Zilla Parishads are arrayed as party respondents that they have formed almost a habit of remaining absent despite due service of notice. This Court has also noticed that these local authorities do not take proper care to file reply well in time. These observations, we may make it clear that are subject to certain just exceptions wherein

appropriate replies have been filed and proper representation was ensured by and on behalf of the local authorities. Such cases are rare. In fact, in one of the cases before us, we have directed the Chief Secretary, State of Maharashtra to take appropriate action against the erring Chief Executive officer. Compliance report in this regard would of course be filed by the Chief Secretary in due time, but if we go by the newspaper reports published in this regard, no action has been taken by the Chief Secretary against the erring Chief Executive officer and only office circular has been issued by him, highlighting the importance of filing prompt response and ensuring proper representation by these authorities before the court. Be that as it may, we would presume that respondent no.5 is not interested in filing any reply and admits the contents made in this petition.

8. In spite of acceptance of the claim of petitioner no.2 by respondent no.5, we must say that the law settled by the Apex Court on the question does not favour the petitioner no.2 in any manner. In the case of Om Anjanwad (*supra*), concurring with the majority opinion, the Hon'ble the Chief Justice writing his separate judgment, has observed that no public office is heritable and that general rule of appointment to public service is through open invitation and on merits and that compassionate appointment is an exception to such general rule.

9. In the case of Director of Education (Secondary) and another vs. Pushpendra Kumar and others : (1998) 5 SCC 192, the Hon'ble Supreme Court has held that after passage of several years after the death of the employee in harness, the application for making of appointment on compassionate basis need not be considered and this is also the view taken by the Supreme Court in another case i.e. Chief Commissioner, Central Excise and Customs Lucknow and others vs. Prabhat Singh : (2012) 13 SCC 412. Both these cases have been duly considered by the coordinate Bench of this Court in Roshan Kale's case (*supra*), as could be seen from the observations made in paragraph no.9 of the judgment but, upon consideration of the law so laid down by the Apex Court, the Division Bench also took into account certain factors which, in the opinion of the Division Bench, were peculiar to the case of Roshan Kale's case. These factors are noted as factors (a) to (g) in paragraph 10 of the judgment. Most of these factors, we must say, are not present in this case. One of the factors which is conspicuously absent in the present case is the desertion of petitioner no.2 by her mother. In Roshan Kale's case, the mother of four minor children (one brother and two sisters), had deserted the children and her whereabouts were not known and the Division Bench further noted that four minor children were orphaned. All these factors particularly the

factor of orphanage of the children who by the time the petition was filed, had turned major, weighed with the Division Bench and, therefore, the Division Bench found that the case of the petitioners therein was quite distinct and unique, thereby making an exception to the general rule of appointment to public service by open invitation and by following the principle of equality for equally situated candidates. Such are not the facts of the case in hand and, on the contrary, after having withdrawn her claim seeking compassionate appointment by the mother of petitioner no.2, the petitioner no.2 has shown her interest in seeking appointment on compassionate basis. By this time, long period of about 12 years has gone by, thereby extinguishing the dire need of appointment in public service by making an exception to the general rule of appointment by open invitation.

10. Even in the case of Ahmednagar Mahanagar Palika (*supra*) the general principle of law to the effect that compassionate appointment is always treated as an exception to the normal method of recruitment, has been reiterated and, therefore, it has been held that the appointment on compassionate ground cannot be extended to the heir/s of the employee who stood retired on superannuation.

11. In view of the above, we find no merit in the petition. The writ petition stands dismissed. Rule discharged.

JUDGE

JUDGE

sahare