

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

WRIT PETITION NO.7602 OF 2018

Ravi s/o Suresh Waatkar,
Aged about 24 years,
Occupation – Labour,
R/o. Old Mortuary,
Near Netaji Ward,
Tah. Warora, Dist. Chandrapur

...PETITIONER

VERSUS

1. State of Maharashtra,
through its Secretary,
Municipal Administration,
Mantralaya, Mumbai
2. Commissioner/Director,
Municipal Administration,
Directorate, Worli, Mumbai
3. The Collector,
Collectorate, Chandrapur,
Dist. Chandrapur
4. Municipal Council,
Warora, through its Chief Officer,
Warora, Dist. Chandrapur
5. Municipal Council,
Warora, through its
President Aeytesham Ali,
Municipal Council, Warora,
Dist. Chandrapur

...RESPONDENTS

Ms. Naziya Pathan, Advocate for the petitioner.
Shri N.R. Patil, Assistant Government Pleader for
respondent Nos.1 to 3/State.
Shri S.A. Sahu, Advocate for the respondent No.4.

CORAM : A.S. CHANDURKAR AND
URMILA JOSHI-PHALKE, JJ.
DATED : AUGUST 4th, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard learned counsel for the parties.

2. **RULE.** Rule made returnable forthwith.

3. The father of the petitioner was working as a 'Peon' in the Municipal Council, Warora having been appointed on 09/11/1979. He died when he was in employment on 18/05/2000. After the death of father of the petitioner namely Suresh, mother of the petitioner namely Tara wd/o Suresh Waatkar had applied for appointment on compassionate ground on 24/06/2000. Said application was considered by respondent Nos.4 and 5 – Municipal Coucil, Warora by passing Resolution on

24/11/2000. Her name was entered in the waiting list as per Resolution dated 24/11/2000. At the time filing application, she was 39 years old.

4. It is the contention of the petitioner that from the year 2000 to 2012, respondents-authorities had not taken any steps for considering the appointment of mother of the petitioner on compassionate ground, therefore, she had made a representation to the respondents-authorities stating that instead of her, name of her son i.e. the petitioner – Ravi s/o Suresh Waatkar be substituted in the waiting list. The respondents-authorities communicated vide letter dated 31/12/2013 to the petitioner's mother that her name had been excluded from the waiting list because she had crossed the age of 45 years and now she is not eligible for the appointment. Again petitioner's mother had sent representation to respondent No.4 to consider the name of the petitioner for appointment on compassionate ground. Respondent No.4 sought guidance from the State of Maharashtra by communication vide letter dated 18/03/2014 and respondent No.2 had given authority to respondent No.4 to decide the said representation as per rule. Subsequently, the petitioner had also given the representation

dated 16/02/2016 to respondent No.4 for considering his name for appointment on compassionate ground. It is the contention of the petitioner that though there are clear directions of State of Maharashtra to respondent No.4 but they had not taken any cognizance about the proposal of the petitioner's appointment on compassionate ground, due to which he is suffering from hardships. Therefore, he filed present petition for seeking appropriate directions to the respondents-authorities to consider his application for appointment on compassionate ground.

5. In the reply, respondent No.4 took a stand that as per the policy of the Government, the mother of the petitioner was not entitled for compassionate appointment as she had crossed the age of 45 years. Due to this reason, by communication dated 31/12/2013, the name of the mother of the petitioner was removed from the waiting list of the candidates to be considered for appointment on compassionate ground. The said decision has been taken by respondent No.4 as per the policy of the Government i.e. Government Resolution dated 06/12/2010. The said order and action of removal of the name of the mother of the petitioner is not challenged either by the petitioner or his mother. It is further

submitted by respondent No.4 that vide communication dated 18/03/2014, there was not a single post of Class-3 or Class-4 category to accommodate the petitioner. In fact, the father of the petitioner expired in the year 2000 and thereafter the petitioner and his family survives for 18 years without any recruitment, therefore, granting relief to compassionate appointment no more survives and writ petition deserves to be dismissed.

6. Heard Ms. Naziya Pathan, learned counsel for the petitioner. She submitted that after the death of father of the petitioner, his mother namely Tara wd/o Suresh Waatkar had applied for the appointment on compassionate ground within limitation period i.e. on 24/06/2000. Respondent No.4 in it's meeting held on 24/11/2000 passed Resolution by considering the application and resolved to enter the name of the mother of the petitioner in the waiting list of the candidates who are to be considered for appointment on compassionate basis. Accordingly, the name of the mother of the petitioner was entered in the waiting list which was published in the year 2003. She submitted that as the appointment was not provided, the mother of the petitioner followed up her requests but nothing happened regarding her

appointment, therefore, she again submitted her representation on 20/07/2009 and made a request that the name of her son i.e. the petitioner-Ravi to be considered for the appointment on compassionate ground. Her communication was replied by respondent No.4 on 31/10/2009 by assigning reason that the vacancy for Class-4 is not available. However, the application of the mother of the petitioner had forwarded to the Collector, Chandrapur for consideration. Again the mother of the petitioner made representation on 27/12/2012 mentioning that her son Ravi i.e. the petitioner had attained the age of majority and, therefore, his name to be considered for the appointment on compassionate ground by substituting his name in the waiting list. However, on 31/12/2013, respondent No.4 communicated that as the mother of the petitioner had crossed age of 45 years and, therefore, her name was deleted from the waiting list. Subsequent to the said communication, again his mother filed representation for considering the name of the petitioner for appointment on compassionate ground. Subsequently, the present petitioner had also made representation on 16/02/2016 for considering his name for the appointment on compassionate ground. She submitted that due to inaction on the part of respondent No.4, the petitioner was

not considered for the appointment on compassionate ground and, therefore, the directions to be issued to respondent No.4 to consider the requests of the petitioner for appointment on compassionate ground.

7. Shri N.R. Patil, learned Assistant Government Pleader for respondent Nos.1 to 3 and Shri S.A. Sahu, learned Counsel for respondent No.4 have submitted that as per the policy of the Government, the mother of the petitioner was not entitled for compassionate appointment after the age of 45 years. It is also submitted that initially the name of the mother of the petitioner was taken in the waiting list but as she had crossed the age of 45 years her name was deleted. Learned Assistant Government Pleader and learned Counsel for respondent No.4 invited our attention towards the Government Resolutions dated 06/12/2010 and 21/09/2017 submitted that prior to 2010, the eligibility criteria for making application for considering the name on compassionate ground, the age limit was 40 years, it was extended as per Government Resolution dated 06/12/2010 up to 45 years. At the time of application in the year 2000, the mother of the petitioner was 39 years old, therefore, initially her name was taken

in the waiting list. It is submitted by learned Assistant Government Pleader that the Government Resolutions and Regulations which were prevalent at the relevant time are to be considered and as per the said rules since the mother of the petitioner has crossed age of 40 years, she became ineligible for consideration for appointment on compassionate ground. Subsequent Government Resolutions are not applicable for her and, therefore, rightly her name was removed from the waiting list. He also invited our attention towards the Government Resolution dated 21/09/2017 Clause 11 (AA) which says that the appointment would be available for the legal representatives of the deceased employee till the age of 45 years. If the members whose names are entered in the waiting list could not get the appointment till the age of 45 years, the names of the said persons are to be deleted from the said waiting list. He submitted in the light of the said condition, the name of the mother of the petitioner was deleted from the said waiting list.

8. Ms. Naziya Pathan, learned Counsel for the petitioner placed her reliance on the order passed in *Writ Petition Nos.3344/2021 (Anjali d/o Dashrath Chauhan Vs. The State of Mah. and ors.) decided on 14/03/2022* and in *Writ Petition*

No.5944/2018 (Smt. Pushpabai wd/o Rajesh Bisne & anr. Vs. State of Mah. & ors.) decided on 22/07/2019.

9. On the other hand, learned Assistant Government Pleader invited out attention towards the order passed in ***Writ Petition No.8042/2019 (Smt. Vibha Prabhakar Bhute & anr. Vs. State of Mah. & ors.) decided on 10/08/2021*** wherein it is held by this Court 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. But, when it is seen that the family is not in need of any such support, compassionate appointment, which is an exception to the general rule of making of public appointment by following due process of law, cannot be given. He also relied upon ***Malaya Nanda Sethy Vs. State of Orissa and ors. in Civil Appeal No.4103/2022*** wherein Hon'ble Apex Court has observed that the claim should be considered as per the amended Rules that were prevalent at the time of consideration of the application and not the Rules that were prevalent on the death of the government servant.

10. He submitted that admittedly the name of the mother of the petitioner was deleted from the waiting list on 31/12/2013 at the relevant time, the petitioner had already attained the age of majority. Neither the petitioner nor his mother had challenged the said order and after five years, this petition is filed. There is no explanation for the delay by the petitioner.

11. Heard both the sides and perused the record. It is an admitted position that the father of the petitioner was working on the post of 'Peon' with answering respondent and it is also not in dispute that he died on 18/05/2000. It is also not in dispute that the mother of the petitioner had filed an application for considering her name for compassionate appointment on 24/06/2000. It is also not disputed that respondent No.4 had considered the said application and passed Resolution to take her name in the waiting list on 24/11/2000. It is further an admitted position that said proposal was forwarded by respondent No.4 to the Collector on 20/03/2001 for approval. The name of the mother of the petitioner reflected in the waiting list till 2003. As per the waiting list published by the respondent No.4 and as per the reply filed by respondent No.4, for the first time the name of the mother of the

petitioner was removed on 31/12/2013 from the said waiting list. It is a part of record that the mother of the petitioner and the petitioner had made several representations to the respondents for considering their names for appointment on compassionate ground. It is apparent from the record that on 31/10/2009, respondent No.4 communicated to the mother of the petitioner that due to unavailability of vacancy of Class-4 they are unable to consider her application for the appointment on compassionate ground but her application is forwarded to the Collector for consideration. Subsequent to the said communication, the mother of the petitioner had made representation on 27/12/2012 and the petitioner had made representation on 16/02/2016. The communication of respondent No.4-Chief Officer, Municipal Council, Warora shows that vide letter dated 31/12/2013 it had communicated to the petitioner that the name of the mother of the petitioner was removed from the waiting list.

12. The respondents have placed reliance on the Government Resolution dated 06/12/2010 which shows that from the date of issuance of said Government Resolution, the age limit for submitting an application for the appointment on

compassionate ground is increased from 40 to 45 years. Said Government Resolution made applicable from 06/10/2010. Thus it shows that prior to 06/10/2010, the age limit provided for the said appointment was 40 years. Subsequent Government Resolution issued on 21/09/2017 further discloses that the maximum age limit provided for submitting the application is 45 years. It is further clarified that such provisions can be considered for appointment till the age of 45 years, if the persons whose names are entered in the waiting list could not get an appointment till the age of 45 years their names are to be removed from the said waiting list. Admittedly, said Government Resolution is not challenged by the petitioner in the said petition. Even neither the petitioner nor the mother of the petitioner had challenged the communication dated 31/12/2013 removing the name of the mother of the petitioner from the waiting list. Subsequently in the year 2018, present petition is filed by the petitioner.

13. 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 concession and not a right. It is held by the Hon'ble Apex Court in the case of ***SAIL Vs. Madhusudan Das (2008) 15 SCC 560*** that compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirants and in the case of ***Kendriya Vidyalaya Sangathan Vs. Dharmendra Sharma (2007) 8 SCC 148*** further held that the employer cannot be compelled to make an appointment on compassionate ground contrary to its policy. In the case of ***Sanjay Kumar Vs. State of Bihar (2000) 7 SCC 192*** it is held by the Hon'ble Apex Court that there cannot be reservation of a vacancy till such time as the applicant becomes a major after a number of years, unless there are some specific provisions. It is further held by the Hon'ble Apex Court in the case of ***The State of Madhya Pradesh Vs. Ashish Awasthi in Civil Appeal No.6903 of 2021*** decided on 18/11/2021 that as per the settled proposition of law laid down by this Court for appointment on compassionate ground, the policy relevant at the time of death of the deceased

employee only is required to be considered and not the subsequent policy.

14. Thus in the catena of decisions, it is held that 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. Full Bench of this Court in *Writ Petition No.3907 of 2021 (Smt. Nilima Raju Khapekar Vs. The Executive Directo, Bank of Baroda, Baroda and ors.) decided on 22/02/2022 held that* while answering the reference that the 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. Being an exception to the normal rule for recruitment in public service, including the guarantees of equality flowing from Articles 14 and 16 of the Constitution, no such appointment can be made de hors the scheme for compassionate appointment which the employer has put in place for regulation of the procedure for appointment.

15. As observed by this Court in *Writ Petition No.8042/2019 (Smt. Vibha Prabhakar Bhute & anr. Vs. State and*

ors.) decided on 10/08/2021 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 honorable life. But, when it is seen that the family is not in need of any such support, compassionate appointment, which is an exception to the general rule of making of public appointment by following due process of law, cannot be given.

16. In the present case also even after attaining the age of majority on 03/10/2012, the petitioner had not taken any effective steps for his appointment on compassionate ground. He neither had challenged the order of removing the claim of his mother from waiting list nor he claimed the consideration for appointment on the compassionate ground by following due process of law. As per the prevalent Rules and Regulations, the name of the mother of the petitioner was removed from the waiting list as she had cross the maximum age limit. Therefore, the action taken by respondent No.4 appears to be legal and proper one. No interference is called for. Hence the writ petition deserves to be dismissed.

17. We, therefore, proceed to pass the following order:

(a) The writ petition is dismissed with no order as to costs.

18. Rule stands discharged.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

**Divya*