

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

113 WRIT PETITION NO.1542 OF 2022

SMITA SHAHAJI KHOPADE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Krishna K. Kulkarni
AGP for Respondent No.1: Mr. V.M. Kagne
Advocate for Respondent No.3 : Mr. S.S. Randive
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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 15th FEBRUARY, 2023.**

PER COURT :-

1. The petitioners have put forth prayer clauses C, D, and E as under:-

- “C) The communication bearing number O.No. MJPML/ Astha-3/959/2021 dated 14.09.2021 issued by the respondent No.3 to the petitioner No.1 may kindly be quashed and set aside.
- D) This Hon’ble Court may be pleased to direct the respondents to issue appointment orders in favour of the petitioner No.2 on compassionate ground.
- E) Pending the hearing and final disposal of this writ petition, the Respondents may kindly be directed to issue appointment orders in favour of the petitioner No.2 on compassionate ground.”

2. Having considered the strenuous submissions of the learned advocates for the respective sides, we find that the relevant factors are as under:-

- a) Father of petitioner No.2 i.e. husband of petitioner No.1, superannuated from employment on 30.09.2020.
- b) He died while in service on 08.10.2020.
- c) He was working as Sub Divisional Engineer (Civil), Group A, in the Maharashtra Jeevan Pradhikaran and he was posted at the Rural Water Supply Division, Jalkot, Zilla Parishad, Latur, vide order dated 07.08.2017.
- d) He reported Covid 19 positive on 24.09.2020 while on duties and he passed away due to Covid infection on 08.10.2020.
- e) On 12.05.2021, the widow made an application.
- f) It is mentioned in the application that though the deceased retired on 30.9.2020, he had contracted the Covid 19 infection on 24.9.2020. He died after superannuation on account of Covid infection and his death is co-related to the Covid 19 infection which he contacted prior to his superannuation.
- g) When this matter was heard on 17.01.2023, we noticed that petitioner No.2 was 31 years of age and there were no pleadings as regards his date of birth, his educational qualification, whether he was in employment, whether he was married and had children etc. Hence, an order was passed on 17.01.2023 as under :-

"1. The petitioner No.2 lost his father on 8.10.2020, who was a Junior Engineer in the Minor Irrigation Department, Zilla Parishad. His mother is already 54 years of age.

2. We find that petitioner No.2 is 31 years of age today.

There are no pleadings in the memo of petition as to the date of birth, his educational qualifications, whether he was any time in employment earlier, whether he is married, whether he has children etc. So also, no details are set out as to whether his mother is receiving pension and has received the service benefits.

3. Keeping in view the judicial pronouncements of the Hon'ble Supreme Court, these details are necessary. We, therefore, direct petitioner No.2 to place on record an additional affidavit setting forth such details. The learned advocate for the petitioner requests for three weeks to file such additional affidavit. Let the additional affidavit be filed on or before 04.02.2023.

4. List this petition in the 'urgent admission' category, on 13.02.2023."

3. Petitioner No.2, son of the deceased, has filed an additional affidavit dated 24.01.2023, stating as under:-

- i) The petitioner No.2's date of birth is 13.03.1990 and he is about 32 years of age today.
- ii) He is Bachelor of Engineering (Electronics and Telecommunications).
- iii) He is a former employee of Axis Bank from 07.07.2016 to 29.01.2020 and ICICI Bank from 05.02.2020 to 07.11.2020.
- iv) He is married and has a son who is about 4 years old.

- v) His mother (i.e. widow) is receiving pension at the rate of Rs.48,127/- p.m.
- vi) She has received G.P.F. amount of Rs.14,03,302/-.
- vii) She has taken out the Group Insurance Scheme.

4. The Hon'ble Supreme Court, while deciding the cases of compassionate appointments, has concluded that the compassionate appointment is neither a right nor a source of employment. It is a facility available to the bereaved family only to render immediate financial succour. If the family is financially well placed, compassionate appointment is not to be granted.

5. In the instant case, the widow is age barred, being almost 55 years. Petitioner No.2 is a son who was an employee with Axis Bank and thereafter, he worked with ICICI Bank. He is B.E. (Electronics and Telecommunications). He is more than 32 years of age, having been born on 13.03.1990. He is married and has a son. The widow is receiving pension of Rs.48,127/- and has received GPF amount of Rs.14,03,302/-. The demise of the employee, purportedly on account of Covid infection, has occurred after his retirement. However, the same can be co-related to the infection contacted by him prior to his retirement. The RTPCR test performed on him indicates that the date and time of collection of sample, was prior to his retirement.

The Rapid Antigen test was positive.

6. However, since the petitioners' family is financially well placed and the petitioner was also employed since July, 2016, which is almost five years, prior to demise of his father, we do not find that the Petitioner was wholly dependent on the deceased father. Merely because the demise could be related to the infection, cannot be the ground to grant compassionate employment to a married son with a family of his own and who was not financially dependent on the father. The impugned order, therefore, cannot be termed as being perverse or erroneous.

7. In **Ahmednagar Mahanagar Palika vs. Ahmednagar Mahanagar Palika Kamgar Union, 2022 III CLR 859**, the Hon'ble Supreme Court has concluded in paragraph 8 as under:-

"8. Even otherwise, such an appointment to the heirs of the employees on their retirement and/or superannuation shall be contrary to the object and purpose of appointment on compassionate grounds and is hit by Article 14 of the Constitution of India. As observed and held by this Court in a catena of decisions, compassionate appointment shall always be treated as an exception to the normal method of recruitment. The appointment on compassionate grounds is provided upon the death of an employee in harness without any kind of security whatsoever. The appointment on compassionate grounds is not automatic and shall be subject to the strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee

and the avocation of the other members of the family. No one can claim to have a vested right for appointment on compassionate grounds. Therefore, appointment on compassionate grounds cannot be extended to the heirs of the employees on their superannuation and/or retirement. If such an appointment is permitted, in that case, outsiders shall never get an appointment and only the heirs of the employees on their superannuation and/or retirement shall get an appointment and those who are the outsiders shall never get an opportunity to get an appointment though they may be more meritorious and/or well educated and/or more qualified. Therefore, the submission on behalf of the respondent that the appointment is not on compassionate grounds but the same be called as varas hakka cannot be accepted. Even if the same be called as varas hakka the same is not supported by any scheme and even the same also can be said to be violative of Article 14 as well as Article 15 of the Constitution of India.”

8. In the case in hands, the widow is depending on the pension amount which is almost Rs.48,127/- p.m. and petitioner No.2-son was in employment from June, 2016. Merely because he has left the job now and does not have a desired job in hand, would not mean that he is entitled for compassionate appointment. He was never financially dependent on his father.

9. In view of the above, this petition is dismissed.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

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