

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

22 WRIT PETITION NO.3272 OF 2023

YOGESH BHAUSAHEB MISAL
VERSUS
THE STATE OF MAHARASHTRA,
THROUGH THE SECRETARY AND OTHERS

AND

72 WRIT PETITION NO.3460 OF 2023

ANIL DADASAHEB THORAT
VERSUS
THE STATE OF MAHARASHTRA,
THROUGH THE SECRETARY AND OTHERS

AND

901 WRIT PETITION NO.3517 OF 2023

APPASAHEB RAOSAHEB DIVATE
VERSUS
THE STATE OF MAHARASHTRA,
THROUGH THE SECRETARY AND OTHERS

...

Mr. Mayur Subhedar, h/f Mr. C. V. Dharurkar, Advocate for Petitioners

Mr. S. K. Tambe, AGP for Respondent/State.

Mr. U. B. Bondar, Advocate for Respondent / Zilla Parishad, Aurangabad.

...

CORAM : **RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 27th March, 2023.

Per Court:

1. Since Shri Bondar, the learned Advocate is on the panel of this Zilla Parishad, we requested him to cause an appearance in these matters and assist us. He has, therefore, appeared in these matters.

2. All these 3 Petitioners are the legal heirs of their deceased fathers, who all were working as Valvemen with the Zilla Parishad, Aurangabad. All claim to be identically placed. All are claiming compassionate appointment.

3. It would be appropriate to reproduce the salient features of each case:-

A) Writ Petition No.3272 of 2023:-

- i) The Petitioner's father died while in service on 22nd March, 2013.
- ii) The mother of the Petitioner receives family pension of Rs.14,000/- per month.
- iii) The Petitioner applied for compassionate appointment after 7 years on 18th February 2020.
- iv) The Petitioner is 28 years of age today and is unmarried.
- v) The Petitioner seeks compassionate appointment after almost 10 years of his father's demise.

B) Writ Petition No.3460 of 2023:-

- i) The Petitioner's father died while in service on 1st February, 2012.
- ii) The mother of the Petitioner receives family pension of Rs.14,000/- per month.
- iii) The Petitioner applied for compassionate appointment on 18th February 2012.
- iv) The Petitioner is 36 years of age today, married and has children.

C) Writ Petition No.3517 of 2023:-

- i) The Petitioner's father died while in service on 20th November, 2012.
- ii) The mother of the Petitioner receives family pension of Rs.14,000/- per month.
- iii) The Petitioner first applied for compassionate appointment on 31st May, 2013.
- iv) The Petitioner is 40 years of age today, married and has children.

4. The contention of these Petitioners is that the impugned orders rejecting their claims for compassionate appointment, all dated 6th April, 2021, is on a solitary ground that the deceased fathers of these Petitioners were working on self generated funds of the Zilla Parishad and were not permanent employees. The learned Advocate for the Petitioners submits that all these deceased employees had approached the Industrial Court seeking regularization, since the Kalelkar settlement was applicable to them. The complainants were allowed. The Zilla Parishad approached the learned Single Judge Bench of this Court and while dismissing the writ petitions filed by the Zilla Parishad, it was recorded that since Kalelkar settlement was applicable, the deceased employees had to initially work for 5 years on daily wages. Thereafter, they were entitled for Converted Regular Temporary Establishment (CRTE) and 5 years thereafter, they were

eligible for regular establishment, which in other words, amounts to granting permanency. The widows are getting family pension since the deceased were in permanent employment.

5. The learned Advocate for the Petitioners has strenuously canvassed that at least in one case i.e. Writ Petition No.3460 of 2023 (Anil Dadasaheb Thorat), the application was filed within 18 days of the death of the father. He concedes that in the first Petition, the application was filed after 7 years, though the Petitioner was adult when his father died, and in the third Petition, the application was filed within 6 months. He, therefore, submits that the fault on the part of the Zilla Parishad cannot cause a disadvantage to the Petitioners. If the Zilla Parishad has delayed the matters for almost 8 to 10 years, the right of the Petitioners cannot be taken away. A duty cast on the Zilla Parishad having not being discharged within time and causing delay, should not defeat the claim of the Petitioners.

6. Though the contention of the learned Advocate is well placed at least in the case of the second and third Petitions (first Petitioner has applied after 5 years), the issue is as to whether the Petitioners were diligent in approaching this Court. There should be some material placed before us, to indicate that the Petitioners' conduct reflects a diligent litigant. So also, the families are not in

pecuniary. An amount of Rs.14,000/- per month as family pension is being paid. The Petitioners are not aware about the actual quantum of gratuity, but fairly submit that their mothers have received the gratuity amounts and the deceased fathers have put in at least 20 years in employment.

7. The law on compassionate appointment has now been crystallized by the Honourable Supreme Court of India in ***Fertilizers and Chemicals Travancore Ltd. Vs. Anusree K.B., AIR 2022 Supreme Court 4766, Director of Treasuries in Karnataka Vs. Somyashree, (2021) SCC Online SC 704*** and ***State of Uttar Pradesh and others Vs. Premlata, (2022) 1 SCC 30***, on the following aspects :-

- (a) Compassionate appointment is not a right to be exercised or enforced.
- (b) Compassionate appointment is an exception to the general rule of recruitment.
- (c) Compassionate appointment to a public post has to be made on the basis of the principle of equality under Articles 14 and 16 of the Constitution of India.
- (d) Appointment on compassionate ground is possible on fulfillment of the norms laid down by the State's policy or eligibility criteria.
- (e) Compassionate appointment is not a mode of recruitment and is meant for granting immediate succour / financial assistance to the family, which needs to be evaluated on the basis of the earning of the family.

- (f) Compassionate appointment being granted after a passage of a decade, would lose its significance.

8. In *Fertilizers and Chemicals Travancore Ltd.* (supra), the Honourable Supreme Court has observed in paragraph Nos.7 to 9.2 as under:-

“7. While considering the issue involved in the present appeal, the law laid down by this Court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision, this Court in the case of Director of Treasuries in Karnataka and Anr. Vs. V. Somyashree, 2021 SCC Online SC 704 : (AIR 2021 SC 5620), had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this Court in N.C. Santhosh Vs. State of Karnataka, (2020) 7 SCC 617 : AIR 2020 SC 1401, this Court has summarised the principle governing the grant of appointment on compassionate ground as under:-

- (i) that the compassionate appointment is an exception to the general rule;
- (ii) that no aspirant has a right to compassionate appointment;
- (iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;
- (iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy

and/or satisfaction of the eligibility criteria as per the policy;
(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

8. As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

8.1 In the case of State of Himachal Pradesh and Anr. Vs. Shashi Kumar reported in (2019) 3 SCC 653 : (AIROnline 2019 SC 628), this Court had an occasion to consider the object and purpose of appointment on compassionate ground and considered the decision of this Court in the case of Govind Prakash Verma Vs. LIC, reported in (2005) 10 SCC 289 : (AIROnline 2004 SC 616), in paras 21 and 26, it is observed and held as under:-

“21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : (AIROnline 2004 SC 616), has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : (1994 AIR SCW 2305)]. The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana,

(1994) 4 SCC 138 : (1994 AIR SCW 2305)] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : (1994 AIR SCW 2305)], SCC pp. 139-40, para 2)

“2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but

for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non- manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

26. The judgment of a Bench of two Judges in *Mumtaz Yunus Mulani v. State of Maharashtra* [(2008) 11 SCC 384 : (2008 AIR SCW 3642)] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in *Govind Prakash Verma* [Govind Prakash Verma

v. LIC, (2005) 10 SCC 289 : 2005 SCC (L and S) 590] : (AIROnline 2004 SC 616) has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.”

9. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.

9.1 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now

and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided.

9.2 Under the circumstances, both, the learned Single Judge as well as the Division Bench of the High Court have committed a serious error in directing the appellants to reconsider the case of the respondent for appointment on compassionate ground. The impugned judgment and order passed by the High Court is unsustainable.”

9. Considering the above, we find that the following aspects are significant:-

- a) The widows of these deceased persons receive pension at the rate of Rs.14,000/- per month and have also received gratuity amount.
- b) More than 10 years have passed since the demise of the bread-earners.
- c) In 2 cases, the Petitioners have got married, are 36 years and 40 years of age, respectively and have children.
- d) In the first Petition, the Petitioner is unmarried, is 28 years of age, but filed the first application for compassionate appointment after 7 years of the demise of his father, though he was an adult when his father passed away in March, 2013.
- e) As held in *Fertilizers and Chemicals Travancore Ltd.*

(supra), compassionate appointment is to be granted only to ensure that the family does not suffer financial difficulties and to render immediate financial succour to the bereaved family. The need for compassionate appointment is emergent and urgent. If the family could survive for 10 years, the purpose of extending immediate financial succour loses its significance. If the candidates have got married, have children and are settled down in life, having eked out a life over 10 years, would neutralize the need of compassionate appointment. No doubt, our Courts have been granting compassionate appointments in somewhat similar circumstances as is contended by the learned Advocate for the Petitioners. However, the Honourable Supreme Court has crystallized the law in ***Fertilizers and Chemicals Travancore Ltd.*** (supra).

10. In view of these circumstances, we do not find that these Petitions could be entertained. The same are dismissed.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]

nga