

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5247 OF 2023

Sayyed Jafargani S/o Chandpasha
Age: 31 years, Occu. Unemployed,
R/o. Manwata Niwas, Near BKD College,
Chakur, Tq. Chakur, Dist.Latur.

... **PETITIONER**

V/s.

1. The State of Maharashtra
Through its Secretary, Education and Sport
Department Mantralaya, Mumbai-32.
2. The Divisional Deputy Director of
Education Latur Division Latur.
3. The Education Officer (Secondary)
Zilla Parishad, Latur.
4. The Lokayat Shikshan Sanstha,
Ahmedpur, Tq.Ahmedpur, Dist. Latur,
Through its President/Secretary.
5. The Principal Bhai Kishanrao
Deshmukh Junior College Chakur,
Dist. Latur.
6. Shivaji s/o Subhash Khirade
Age: 30 years, Occu: Service
R/o. BKD Collage, Chakur, Tq.Chakur,
Dist. Latur.

... **RESPONDENTS**

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Mr. S.K. Shaikh, Advocate for the Petitioner.

Mr. A.V. Deshmukh, AGP for Respondent Nos.1 to 3.

Mr.V.D. Hon, Sr. Advocate i/b. S.S. Manale, Advocate for Respondent Nos.4 to 6

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**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.**

DATE : 23rd October, 2023

JUDGMENT (Per: Y.G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties at the stage of the admission.

2. By the present petition under Article 226 of the Constitution of India, the Petitioner prayed for issuance of Writ of Mandamus directing the Respondent Nos. 4 & 5 to appoint him on compassionate basis on the post of Junior Lecturer in place of his deceased father.

3. In nutshell, facts giving rise to the petition are that Mr. Sayyed Chandpasha Babamiya, the father of the Petitioner, was appointed as a Junior College Lecturer with the Respondent No.5 run by the Respondent No.4 Education Sanstha. His father was a permanent employee. However, all of a sudden his father died on 13.11.2012. At the time of death of his father, he was 22 years old and was studying. He did M.A., B.Ed. He and his family members were having no source of income. Her mother Mrs. Sayyed Khudaija Sayyed Chandpasha submitted an application on 03.12.2012 addressed to the Respondent No.2-Deputy Director of Education for grant of appointment on compassionate ground to the Petitioner. However, no appointment was granted. Therefore, time and again, the Petitioner submitted various applications with

the Respondent-Authorities on 27.11.2012, 12.01.2022, 12.08.2022, 13.09.2022 & 30.01.2023. By all these Representations, the Petitioner prayed for appointment on the compassionate basis, but the Respondent Nos. 4 & 5 failed to issue an appointment order in his favour, though the Respondent No.2-Divisional Deputy Director of Education was directed to consider his request. The Respondent No.5 published an advertisement on 15.07.2016 and appointed Respondent No.6 against the said advertisement but no appointment was given to him. Further, again Respondent Nos.4 & 5 advertised the post of Jr. College Lecturer on 15.06.2018, but subsequently said the advertisement was recalled. The Petitioner contended that Respondent Nos. 4 & 5 appointed Respondent no. 6 without considering his claim. Therefore, action on the part of Respondent Nos.4 & 5 is illegal, bad in law and, hence, prayed for quashing and setting aside appointment order dated 01.08.2016 issued in favor of Respondent No.6. The Petitioner further prayed for issuance of a direction to the Respondents to issue an appointment order in his favour on compassionate ground on the post of Junior Lecturer.

4. Per contra, Mr. V.D. Hon, Senior Advocate appearing for the Respondent Nos.4 to 6 strongly resisted the claim of the Petitioner and submits that the Petitioner's father died on 13.11.2012. Though the Petitioner's mother had submitted an application for providing appointment to her son i.e.

Petitioner, but till 20.06.2017, the Petitioner was not qualified for appointment as a Lecturer. The Petitioner and his family members received death-cum-retrial benefits to the tune of Rs. 7,00,000/- towards gratuity, Rs. 4,70,180/- towards GPF in the year 2013. The Petitioner's mother is receiving Pension to the tune of Rs.29,000/- per month. Besides this, the Petitioner's brother Mr. Azhar Chandpasha Sayyed is employed in a private company at Mumbai and drawing handsome salary. Therefore, the Petitioner's family is not suffering from harness and sudden crises. He therefore prayed for dismissal of the petition.

5. Mr. A.V. Deshmukh, the learned AGP submitted that the State Government issued the GR dated 31.12.2002 and 27.09.2021. As per both these GRs, the State Government has framed the scheme for providing compassionate employment to the legal heir of a permanent employee of Private Primary, Higher and Secondary Schools, which are running on 100% grant-in-aid basis, in case of employees who have died in harness while in employment. As per Schedule B of the GR dtd. 31.12.2002, the Scheme is made applicable to the teaching and non-teaching staff of private Primary, Middle and Higher Secondary Schools, which are running on 100% grant-in-aid basis. The post of Junior College Lecturer does not fall within the ambit of Class III & IV Employees. Therefore, the Petitioner is not entitled for employment on compassionate grounds.

6. Having regard to the submissions canvassed on behalf of both the sides, we have gone through the record. It is an admitted fact that Mr. Sayyed Chandpasha Babamiya, the father of the Petitioner was a permanent Junior College Lecturer with the Respondent No.5 run by the the Respondent No.4 Education Sanstha. The Petitioner's father had completed approximately 22 years of service. All of a sudden, he died on 13.11.2012. The Petitioner's mother submitted an application with the Respondent No.2-Dy. Director of Education on 03.12.2012 and prayed for appointment of the Petitioner on compassionate ground. At that time, the Petitioner was studying in the final year of B. A. So also, subsequently, the Petitioner submitted various applications / representations and sought appointment on compassionate ground. But Respondent Nos.4 & 5 failed to issue the appointment to the Petitioner, though he is M.A. B.Ed.

7. Needless to say that on 13.11.2012, the Petitioner's father died. Thereafter, the Petitioner's mother submitted an application with the Respondent No.2 seeking appointment on compassionate basis for the Petitioner on 03.12.2012. At the time of death of Petitioner's father the Petitioner was 20 years old and by this time he is 31 years old. No doubt, subsequently on 27.11.2012, 12.01.2022, 12.08.2022, 13.09.2022 & 30.01.2023, the Petitioner submitted various applications / representations,

but remained silent for 11 years, prior thereto. It is a matter of record that the Petitioner and his family members received death-cum-retrial benefits to the tune of Rs.7,00,000/- towards gratuity, Rs. 4,70,180/- towards GPF in the year 2013 and the Petitioner's mother is receiving Pension to the tune of Rs. 29,000/- per month.

8. In case of **Ahmednagar Mahanagar Palika V/s. Ahmednagar Mahanagar Palika Kamgar Union; (2022) 10 SCC 172** and **The State of West Bengal V/s. Debabrata Tiwari & Ors.; 2023 (5) Mh.L.J. 156(SC)**, the Hon'ble Supreme Court held that the object of granting compassionate employment is to tide over a sudden crisis and application for grant of appointment on compassionate basis should not be considered after prolonged delay. The sense of urgency should not be lost and entertaining a claim after 17 years would be of no avail. Hence, relief in such cases would be improper.

9. Needless to mention that the aim and object of compassionate appointment is to alleviate the financial difficulties of the family of the deceased Government servant who are in distress on account of death of the sole bread earner. It is with this object that the scheme for compassionate appointment is introduced and implemented by the Government so that the family of the deceased should get some financial assistance for livelihood of the family members. The principles for appointment on compassionate ground in

view of various judgements of the Hon'ble Supreme Court, more particularly in **Debabrata Tiwari & Ors (supra)**, can be summarized as under:-

“A) Public employment in offices or posts under the State or its instrumentalities or any other authority covered by Article 12 of the Constitution must be in accordance with Articles 14 and 16 of the Constitution, meaning thereby that appointment must be preceded by an invitation to the public for offering one's candidature for consideration, providing equal opportunities to each of the applicants to participate in the process and subject to fulfillment of the eligibility criteria, selection on the basis of merit.

B) Appointment on compassionate ground, which is offered on humanitarian ground, is an exception to the above rule of equality in the matter of public employment. However, compassionate appointment is not permissible in the absence of any scheme thereof.

C) None can claim compassionate appointment, on the occurrence of death/ medical incapacitation of the concerned employee (the sole bread earner of the family), as if it were a vested right, and any appointment without considering the financial condition of the family of the deceased is legally impermissible.

D) The whole object of granting compassionate employment by an employer being intended to enable the family members of a deceased/incapacitated employee to tide over the sudden financial crisis, appointments on compassionate ground should only be made in exceptional cases to save the family of the deceased / incapacitated staff from destitution where, but for such appointment, they would not survive.

E) The idea of compassionate appointment is not to provide for endless compassion.

F) Compassionate employment being an exception to the general rule, the scheme therefore, has to be strictly construed and confined only to the purpose it seeks to achieve.

G) Irrespective of the time taken for offering compassionate appointment, rejection of a claim for compassionate appointment on the ground that the family members of the deceased/incapacitated employee are not in financial distress cannot be followed by an application by a different dependent.”

10. Needless to mention, compassionate appointment cannot be granted as a right. It is by way of concession intended to provide some financial assistance to the family of the deceased for survival. The idea of compassionate appointment is not to provide for endless compassion. The claim for

appointment on compassionate ground should be proximate to the time of death of the bread earner of the family and it cannot be raised after lapse of considerable time. It cannot be another source of recruitment nor bonanza. Otherwise, it amount to misuse of scheme and real needy person will be deprived of appointment.

11. It is in this background and factual aspect, it is necessary to consider the claim for appointment on compassionate ground. The object of compassionate appointment is to provide financial assistance for livelihood of bereaved family on account of death of sole earning member. In the present case, the Petitioner's father died on 13.11.2012, when the Petitioner was 20 years old and now he is 31 years old. Approximately, period of 11 years have lapsed. Had there been any such actual necessity of financial assistance, the applicant would not have remained silent and ought to have availed legal remedy without loss of time. This also indicates non-necessity of any such financial assistance in the nature of compassionate appointment. Therefore, taking into consideration the law laid down by the Hon'ble Supreme Court in cases of **Ahmednagar Mahanagar Palika** and **Debabrata Tiwari** cited (supra), the Petitioner fails to substantiate a claim for appointment on compassionate ground.

12. Further, the Petitioner has not brought any material on record to show that the State Government issued any circular or Government Resolution to provide appointment on compassionate ground to the legal heirs of Junior College Lecturer. Whereas, the State Government issued the GR dated 31.12.2002 and made applicable the scheme of providing employment to the legal heir of permanent employee of Private Schools, which are running on 100% grant-in-aid basis, in case employee/s died in harness. As per Schedule-B of the GR, scheme is made applicable to the teaching and non-teaching staff of private Primary, Middle and Higher Secondary Schools, which are running on 100% grant-in-aid basis. The post of Junior College Lecturer does not fall within the ambit of Class III & IV Employees. It would be worthwhile to note that, the post of Junior College Lecturer is not equivalent to teaching and non-teaching staff of private Primary, Middle and Higher Secondary Schools. Therefore, said scheme is not applicable to the Petitioner.

13. In view of above discussion, **present petition fails and is accordingly dismissed.** Rule discharged. No order as to costs.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]