

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7973 OF 2023

Niyaz Ismail Mulla

....Petitioner

Versus

State of Maharashtra & Ors.

....Respondents

Appearances :

Mr. Rakesh Bhatkar for Petitioner.

Mr. R. P. Kadam, AGP for State.

**CORAM : DHIRAJ SINGH THAKUR &
SANDEEP V. MARNE, JJ.**

DATE : 05 JULY 2023.

P. C.:

Petitioner has filed the present petition challenging order dated 15 December 2022 rejecting his request for grant of compassionate appointment.

2. Petitioner's mother was employed on the post of 'Assistant Teacher' in Zilla Parishad Primary School. While in service, she expired on 1 November 2020. Petitioner submitted an application for compassionate appointment in place of his mother. The application was rejected by Zilla

Parishad Ratnagiri by order dated 15 December 2022 on the ground that the Petitioner's father was employed as Cluster Head and took voluntary retirement on 1 October 2021. The Zilla Parishad has relied upon Government of Maharashtra's instructions, under which compassionate appointment is not admissible if any member of the family is employed in government service.

3. The learned counsel for Petitioner would submit that the impugned order dated 15 December 2022 refers to Government Resolution 'October 2000'. That the Petitioner filed application under Right to Information Act 2005 seeking copy of Government Resolution dated October 2000 and by order dated 2 March 2023, he was informed that the file containing said GR is not available. He would therefore submit that the Petitioner's case is rejected by relying on a GR, which is non-existent. He would further submit that though the Petitioner's father was employed in government service, he was residing separately and has not been looking after the Petitioner. That the father suffers from heart ailment and therefore took voluntary retirement. Therefore, father's service could not have been a ground for rejection of the Petitioner's application for compassionate appointment. Relying on paragraph No.5(e) of the Government Resolution dated 21 September 2017, he would submit that merely because the Petitioner's father is in government service, the same could not have been a reason for rejection of application for compassionate appointment and that Zilla Parishad ought to have conducted inquiry about financial condition of the family of the deceased government servant as provided in paragraph No.5(e) of the Government Resolution.

4. We have considered the submissions. So far as first objection raised by the Petitioner about nonexistence of Government Resolution of 'October 2000' is concerned, the same appears to be merely a typographical error. Consolidated instructions on compassionate appointment have been compiled in Government Resolution dated 21 September 2017. Paragraph No.5(e) thereof provides that if any relative of deceased government servant is already in service and in case he is not looking after other members of the family, the financial condition of the family is required to be determined with extreme caution and it should be ensured that the facility of compassionate appointment is not misused by citing a reason that serving family member is not looking after the family. The said instruction presupposes that compassionate appointment should ordinarily be denied if there is another member of family employed in government service. Where a plea is raised that the employed member is not looking after the family, the same should not be accepted on its face value and a thorough enquiry is required to be conducted about the truth of such a claim. Thus the enquiry as provided for in Para 5 (e) is not automatic in every case where a family member is in government service. The same is required only where a claim is raised about failure to maintain the family by serving member.

5. In the present case the Petitioner's mother, who was employed as Assistant Teacher in Zilla Parishad School, expired on 1 November 2020. Petitioner filed an application for compassionate appointment after some delay on 30 June 2021. At the time of his mother's death, the Petitioner's father Shri. Ismail Kutubuddin Mulla was working on the post of Cluster Head of Zilla Parishad schools. He opted for voluntary retirement w.e.f. 1 October

2021 i.e. after death of the Petitioner's mother. Thus, as on the date of death of the deceased employee, her husband was working in Zilla Parishad service. If the family was indeed in a state of penury, the father wouldn't have given up his job shortly after death of the mother.

6. The contention of the Petitioner that his father has been residing separately and is not looking after the family does not appeal to us. There are no pleadings to that effect in the Writ Petition. On the contrary it is pleaded in paragraph No.3(d) of the petition that the Petitioner father took voluntary retirement on account of his heart surgery. The Petitioner also did not plead anywhere in his application that his father is residing separately. On the contrary Petitioner's father signed and filed a declaration dated 17 September 2021 giving consent for the Petitioner's compassionate appointment. Petitioner also submitted self-declaration dated 17 September 2021 undertaking to look after his father and sister. Therefore, the story sought to be woven about separate residence of father appears to be totally false.

7. Since the Petitioner's father has taken voluntary retirement w.e.f. 1 October 2021, he would receive pension and other pensionary benefits. As per the information disclosed in Annexure-D to the application for compassionate appointment, family pension of Rs.30,000/- is shown to be paid in respect of services rendered by the Petitioner's mother. Additionally, an amount of Rs. 2,60,000/- was paid towards her retiral benefits. Additionally, Petitioner's father must have also received various amounts towards his retiral benefits in addition to family pension. Therefore, it does not appear that the financial condition of Petitioner's family is such that an

immediate succor in the form of compassionate appointment is needed. Petitioner's application for compassionate appointment is thus rightly rejected.

10. In the result we do not find any merit in the present Writ Petition. Writ Petition is dismissed with no order as to costs.

SANDEEP V. MARNE, J.

DHIRAJ SINGH THAKUR, J.

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