

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3564 OF 2022

Prasad Rajaram Bhusal

....Petitioner

V/S

The Commissioner of Police Nashik & Ors.

....Respondents

...

Ms. Indrayani M. Koparkar for the Petitioner.

Mr. M.M. Pabale, AGP for Respondent Nos.1 and 2-State.

...

**CORAM: S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATE : 20 MARCH 2023.

P.C.:

1 The Petitioner sought appointment on compassionate ground. The same was rejected. The Petitioner filed the Original Application before the Maharashtra Administrative Tribunal, Mumbai (**Tribunal**). The said Original Application is dismissed. Aggrieved thereby the present Petition.

2 The learned Advocate for the Petitioner submits that the father of the Petitioner prematurely retired on medical grounds. The mother of the Petitioner applied for appointment on compassionate ground immediately. The same was rejected in the year 2008 as she had crossed the age of 40 years. The Petitioner became major in the year 2014 as such on 12 May 2014 applied seeking appointment on compassionate ground. The said

Application was rejected on 28 May 2014. The Petitioner was making Application with the Respondents. Eventually in the year 2017 the Petitioner filed an Original Application before the Tribunal. The Application for condonation of delay was rejected.

3 It is submitted that the Authorities and the Tribunal ought to have considered that the Petitioner has no source of income. The Petitioner upon becoming major immediately filed an Application seeking appointment on compassionate ground. The Respondent-Authorities ought to have considered the said aspect. The Tribunal has taken a very technical approach while rejecting the Application of the Petitioner for condonation of delay and the delay has to be liberally construed. More so in case wherein the Petitioner is seeking appointment on compassionate ground.

4 We have heard the learned AGP.

5 The father of the Petitioner admittedly prematurely retired on the medical ground in the year 2000. Subsequently the father of the Petitioner died in the year 2005. The Application filed by the mother for appointment on compassionate ground was rejected in the year 2008 as she had

crossed the upper age limit of 40 years. The Petitioner became major in the year 2014. The Petitioner thereafter applied for appointment on compassionate ground. The same was rejected immediately on or about 28 May 2014. For three years the Petitioner did not take any steps and thereafter filed the Original Application in the year 2017, after removal of objections, the same appears to have been registered in the year 2018.

6 The Tribunal has observed that the Petitioner participated in other recruitment process and has also completed graduation. However, he choose not to challenge the impugned order rejecting the Application for compassionate appointment for a period of three years.

7 It is more than 23 years the father of the Petitioner had retired prematurely on the medical ground. After such a long delay the purpose of seeking appointment on compassionate ground does not subsist. The Apex Court in a case of **The State of West Bengal vs. Debabrata Tiwari, Civil Appeal Nos.8842-8855 of 2022** under the judgment and order dated 3 March 2023 observed as under:

“7.5. Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we

are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in **Hakim Singh** would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.”

8 In light of the above, the judgment of the Tribunal cannot be faulted.

The Writ Petition as such is disposed of. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

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signed by
SUDARSHAN
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KATKAM
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