

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5656 OF 2007

Union of India & Ors.

... Petitioners.

V/s.

Shri. Shripad Malharrao Kulkarni

... Respondent.

None for the Petitioners.

None for the Respondent.

**CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.**

DATE : 19th December 2023.

P.C. :

1. None appeared for the parties on the earlier dates as well, therefore, a detailed order was passed. The matter was adjourned noting that if none appears for the Respondent, the Court may presume that Respondent is not interested. This order was passed in view of the following facts.

2. The father of the Respondent had retired on invalidation on medical grounds on 23rd April, 2002. The Respondent's father was paid retiral dues. The Respondent submitted an application for appointment on compassionate grounds on 13th June, 2003. Thereafter upon an application filed by the Respondent, the Central Administrative Tribunal directed the Petitioners to decide the application within a time bound period. The case of the Respondent was considered by Special Relaxation Committee and the application

was rejected on 24th April, 2005 noting that the financial condition of the Respondent was good and there was no vacancy. Accordingly, order dated 13th July, 2005 was communicated to the Respondent.

3. Respondent filed Original Application No.50 of 2006. The Tribunal allowed the Original Application by order dated 12th February, 2007. The Petitioners/Union of India filed this Petition on 30th July, 2007. Notice before admission was issued and interim relief was granted staying the impugned directions. This notice was served on the Respondent.

4. Therefore, Petition came up before Division Bench on 26th November, 2007, when Rule was issued and Rule on interim relief was made returnable and the ad-interim order granted earlier was continued.

5. Thereafter the Petition has remained pending. Noting these facts on 25th September, 2023, following order came to be passed :-

The Petitioner-Union of India has challenged the order passed by the Central Administrative Tribunal directing that the Respondent be taken on the waiting list and offered an appointment on compassionate basis as and when vacancy is available.

2. The Respondent's father was working in the department of Post. He retired on invalidation with effect from 23 April 2002. The Respondent made an application to

the Post Authorities on 5 January 2004 for appointment on compassionate basis. At that time he was 23 years of age.

3. The order of the Tribunal dated 12 February 2007 has been stayed by this Court by order dated 6 August 2007 and the interim order has been continued till date. Therefore, we cannot be unmindful of the time span between 23 April 2002 till date, especially when, what is under consideration is appointment on compassionate basis.

4. None appears for the parties.

5. In the Writ Petition notice was issued to the Respondent, none had appeared in spite of the notice, hence, Rule was issued. Thereafter, the interim order was continued.

6. Stand over in the week commencing from 9 October 2023.

7. If, none appears for the Respondent on the next date, the Court may proceed on the basis that the Respondent is not interested and pass appropriate orders.

6. None appears for the parties.

7. As stated in the order dated 25th September, 2023, the factum of grant of stay to the impugned order which is in operation since 2007 has to be considered, also the time span of more than two decades from 23rd April, 2002 till this date has to be considered, since what was sought was appointment on compassionate basis.

8. In spite of interim order, the Respondent not appeared. The reason given by the Petitioners that the family of the

Respondent was not in need of support as they were financially well of, appears to have substance considering the indifference shown by the Respondent in prosecuting this Petition. Furthermore, position as of today is not placed on record by either of the parties. Considering the passage of time and the fact that the interim order is in operation since more than 15 years, it is not possible for us without there being any material of the present situation, to direct that the Respondent be taken in service on compassionate basis. The Respondent as per the pleadings on record was of 31 years old in the year 2008 and now would be more than 45 years old.

9. In light thereof and in view of continuous non-appearance of the Respondent, we have no option left but to confirm the interim order into the final order as sought for by the Petitioners.

10. Accordingly, Rule is made absolute in terms of prayer clause (a).

11. It is open to the Respondent to seek recall of this order, if any application to that effect is filed within a period of three months from today placing on record the position as of today demonstrating that the Respondent is still entitled to appointment on compassionate basis in law and on facts.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)