

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7649 OF 2023

1. State of Maharashtra
Through Principal Secretary
Revenue and Forest Department,
Mantralaya, Mumbai- 400 032.
2. Collector, Collector Office,
Swaraj Bhavan, Nagala Park,
Kolhapur 416 003.
3. The Sub Divisional Officer,
Gadhingaj, Gadhingaj Division,
Dist. Kolhapur 412 308. ... Petitioners.

V/s.

Smt. Suvarna Sanjay Shinde,
Residing at Sanskruti Colony,
Lane No.12, Ganganagar,
Post- Phursungi, Tal. Haveli,
Dist. Pune. ... Respondent.

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Mr.N.K.Rajpurohit, AGP for the Petitioner- State.

Mr.Sanjay Kshirsagar with Mr.Rahul Shinde for the Respondent.

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

DATE : **11 September 2023.**

JUDGMENT : (Per Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. As per the order dated 25 August 2023, the petition is taken up for disposal. Respondents waive service.

2. The Petitioner- State of Maharashtra has challenged the order passed by the Maharashtra Administrative Tribunal dated 4 August 2022 allowing Original Application No.996/2021 filed by the Respondent and directing the Petitioner- State to restore the name of the Respondent in the waiting list for issuance of appointment order on compassionate basis subject to fulfillment of the eligibility criteria.

3. The husband of the Respondent worked as Talathi in the establishment of Sub-Divisional Officer, Gadhinglaj, Kolhapur. He expired while in service on 10 October 2011. The Respondent being widow and the only heir of the deceased government servant applied for appointment on compassionate basis as per the policy of the State Government. An application was made within a period of

one year from the death of Respondent's husband. As per the procedure adopted by the Petitioner- State, the name of the Respondent was entered in the waiting list which was maintained by the Collector, Kolhapur. By order dated 7 May 2021, the Collector, Kolhapur deleted the name of the Respondent from the waiting list as the Respondent had crossed the age of 45 years making her ineligible for appointment on compassionate basis. The Respondent challenged this communication dated 7 May 2021 by filing Original Application No.996/2021 which was allowed by the impugned order dated 4 August 2022.

4. We have heard Mr.Rajpurohit, learned AGP for the Petitioner- State and Mr. Kshirsagar for the Respondent.

5. The Tribunal has referred to the Government Resolution dated 20 May 2015 and the consolidated Government Resolution dated 21 September 2017. These Government Resolutions stipulate that minimum age for eligibility to appointment on compassionate basis is 18 years and the maximum age is of 45 years. The Government Resolution dated 21 September 2017 provides that if the candidates on waiting list do not get appointment by the age of 45 years, they cannot be continued in the waiting list as they become ineligible for appointment. Though the Tribunal has noted that the action taken by the Collector is pursuant to the said Government Resolution, the Tribunal has not set aside the said

Government Resolution nor we are shown any judicial pronouncement by which the said Government Resolution has been set aside. Therefore, the stipulation of non-continuation of the Applicant after the age of 45 years continues to hold the field. With the Government Resolutions being applicable as a general policy, the Tribunal has passed an order contrary to it.

6. The Tribunal has referred to the decision of the Hon'ble Supreme Court in the case of *Smt.Sushma Gosain v. Union of India*¹, wherein the Hon'ble Supreme Court has stressed upon the need to grant appointment on compassionate ground at the earliest and that if there is no post available to create supernumerary post to accommodate the applicant. The Tribunal, however, has not adverted itself to the complete law on the subject and various decisions of the Hon'ble Supreme Court wherein it is stressed that the appointment on compassionate basis is not an another source of recruitment having vested right but such appointments are to be considered strictly within the parameters of the policy.

7. The legal position from the dicta of the Hon'ble Supreme Court in *Umesh Kumar Nagpal v. State of Haryana*² and *MGB Gramin Bank v. Chakrawarti Singh*³ can be summarised as follows. Public service appointments typically follow a strict process of openly inviting applications and selecting candidates based on

1 AIR 1989 SC 1976

2 (1994) 4 SCC 138

3 (2014) 13 SCC 583

their qualifications. Governments and public authorities must stick to this process and cannot deviate or lower the requirements for a position. However, there are exceptions to this rule, which exist to ensure fairness and address specific situations. One such exception pertains to the dependents of an employee who dies while in service, leaving the family in financial distress with no means of support. In these cases, out of pure humanitarian concern and recognizing that the family would struggle to make ends meet without a source of income, rules are in place to offer employment to an eligible family member of the deceased. The primary aim of compassionate employment is to assist the family during this sudden crisis, not to grant them the same position held by the deceased employee. It is important to note that the mere death of an employee during service doesn't automatically entitle the family to compassionate employment. The government or relevant public authority must evaluate the financial situation of the deceased employee's family. Employment is only offered if it is determined that the family cannot overcome the crisis without it. Typically, such appointments are limited to the positions in Classes III and IV. Offering employment in these lower positions as an exception to the rule is considered fair and valid, as it does not discriminate. The preferential treatment given to the dependents of the deceased employee in these positions aligns with the goal of helping them escape destitution. It is crucial to remember that there could be many other families in similar or worse financial situations than the deceased employee's family. While

making an exception in favour of the deceased employee's family, the competent authority is required to assess the financial condition of the deceased employee's family. Only if it is determined that the family cannot overcome the crisis without employment should a job be offered to an eligible family member. Furthermore, the person seeking such an appointment must meet the required qualifications for the position. The consistent view of the Hon'ble Supreme Court is that compassionate employment cannot be demanded as an absolute right. It is emphasized that the courts and tribunals should not grant special favours based on personal views of sympathy to make compassionate appointments when the governing Rules and Policies do not allow for them.

8. Therefore, only on the sympathetic consideration, the Tribunal could not have ordered appointment on compassionate basis in contravention of the policy which is holding the field.

9. The Tribunal has also referred to the decision of Division Bench of this Court in the case of *Dnyaneshwar Ramkishan Musane v. State of Maharashtra*⁴. However, reliance of the Tribunal on this decision is entirely misplaced. In the case of *Dnyaneshwar Ramkishan Musane*, the issue was whether, after reaching the age of 45 years, the applicant on the waiting list can substitute the name of another legal representative or not. This Court disapproved the condition laid down in the Government Resolution dated 20 May

4 WP No.6267/2018 decided on 11 March 2020.

2015 that the substitution is not permissible. The decision in the case of *Dnyaneshwar Ramkishan Musane* does not lay down that the appointment needs to be given to an applicant or the name of the applicant needs to be continued even after the age of 45 years is crossed by the applicant.

10. That being the position, we find that the view taken by the Tribunal is not as per the legal position. The Tribunal has directed Petitioner No.2- Collector to act contrary to the Government Resolutions dated 20 May 2015 and 21 September 2017. The direction is also contrary to the object of providing appointments on compassionate basis.

11. The Petitioner- State has challenged the order of the Tribunal in the case of an individual appointment but we are constrained to interfere because, based on the said decision of the Tribunal the other applicants who are ineligible would demand that they should also be considered for appointment on compassionate basis even after crossing the maximum age limit. Such anomalous position cannot be permitted to exist and, therefore, we are required to interfere with the impugned order passed by the Tribunal.

12. Accordingly, writ petition is allowed. The impugned order dated 4 August 2022 is quashed and set aside. Rule is made absolute in the above terms.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)