

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

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WRIT PETITION NO. 4850 OF 2023

Bhagyashree R. Dhanaskar Petitioner

Vs.

The Commissioner, Employees
State Insurance Scheme & Ors. Respondents

Mr. Shankar P. Thorat with Mr. Gurunath B. Walawalkar for
the Petitioner
Mr. B. V. Samant, AGP for the State

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

DATED : APRIL 10, 2023

P.C.

1. The Application of the Petitioner for appointment on compassionate ground is rejected. The Petitioner filed Original Application before the Maharashtra Administrative Tribunal, Mumbai (**the Tribunal**). Same is rejected. Aggrieved thereby, the present Writ Petition.

2. The learned Counsel for the Petitioner submits that the mother of the Petitioner was in employment with Respondent Nos.1 and 2. She died on 6th April 2008 while in

service. The Petitioner got married on 25th November 2008. The married daughter is also entitled for appointment on compassionate ground. The claim is rejected only on the ground that the father of the Petitioner is in Government service. The Tribunal failed to consider that the Petitioner had separated on 25th November 2008 after her marriage and was not residing with her father. The father being in service and/or getting pension subsequently, would not be a ground to negate the relief to the Petitioner. The learned Counsel submits that the inquiry ought to have been conducted by the Respondents as to the residence of the Petitioner being separated from the father. No inquiry has been conducted. The Tribunal also had observed that the Respondents were required to conduct the inquiry. The learned Counsel submits that the Petitioner is not residing with her father since her marriage. The husband of the Petitioner is also unemployed. The Petitioner is entitled to the benefit of compassionate appointment.

3. It is not disputed that the father and mother of the Petitioner, both were employed with Respondent Nos.1 and 2. The mother of the Petitioner died on 6th April 2008

and at that time father of the Petitioner was in service with Respondent Nos.1 and 2. It is also not disputed that the Petitioner was residing with her father at the time of death of her mother. The Petitioner filed Application on 5th July 2008 seeking appointment on compassionate ground. In the Application, the Petitioner narrated that her father is dependent on her. In fact, the father was in Government service at the relevant time. The Application of the Petitioner for appointment on compassionate ground is rejected on 23rd September 2009. The Petitioner did not challenge the said order at any material point of time. The father of the Petitioner retired from service on 30th June 2016. Thereafter the Petitioner again filed an Application in the year 2017 seeking appointment on compassionate ground. The said Application is rejected. Aggrieved thereby, the Petitioner filed the Original Application before the Tribunal.

4. If the Petitioner was in need of the service, the Petitioner ought to have challenged the rejection of her Application in the year 2009 itself. The said order, admittedly, is not assailed by the Petitioner.

5. There was no propriety in giving second Application on the same cause of action. The father of the Petitioner is alive and receiving the pension, as such, cannot be said to be dependent on the Petitioner. Admittedly, when the Petitioner filed an Application, the Petitioner was residing with her father who was in Government service. Naturally, the Petitioner could not have been considered for appointment on compassionate ground in place of her mother. Subsequent to her marriage on 25th November 2008 her Application was rejected in the year 2009. The Petitioner accepted the said order. Again, in the year 2017 a fresh Application was made which certainly could not have been entertained. The Tribunal has considered all aspects of the matter. The Tribunal is right in rejecting the Original Application.

6. No case for interference is made out. The Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J.) (ACTING CHIEF JUSTICE)