

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3215 OF 2021

Petitioners

- : 1. Sau. Rajeshri w/o Dnyaneshwar Khope,
Aged about 32 years, Occ. Housewife,
R/o Behind New English High School,
Sahakar Nagar, Mohapa, Nagpur.
2. Smt. Venutai wd/o Manik Bhatkulkar,
Aged about 50 years, Occ. Nil,
R/o at Post Hivara (Purna), Asegaon (Purna),
Taluka Achalpur, District Amravati.

– Versus –

Respondents

- : 1. State of Maharashtra,
through its Secretary,
General Administration Department, Mantralaya,
Mumbai.
2. Chief Administrative Officer,
Maharashtra Jeevan Pradhikaran,
4th Floor, Express Towers, Nariman Point, Mumbai.
3. Superintending Engineer,
Maharashtra Jeevan Pradhikaran,
Mandal, Amravati.
4. Superintending Engineer & Chairman,
Parimandal, Maharashtra Jeevan Pradhikaran,
Mandal, Telangkhedi, C.P. Club, Nagpur.

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Mrs. R.D. Raskar, Advocate for the Petitioners.

Mr. Amit Madiwale, Advocate for Respondent No.1/State.

Mr. D.V. Mahajan, Advocate for Respondent Nos.2 to 4.

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CORAM: **A.S. CHANDURKAR AND M.W. CHANDWANI, JJ.**

DATE : **11th APRIL, 2023.**

J U D G M E N T : (Per M.W. Chandwani, J.)

Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

02] The petitioners seek direction to respondent Nos.2 to 4 to consider the claim of petitioner No.1 for her appointment on compassionate ground on suitable post according to her qualification.

03] Father of petitioner No.1 and husband of petitioner No.2 deceased Manik Sitaram Bhatkulkar (hereinafter referred to as ‘deceased employee’ for short) was serving with the respondents as Labour since 31/03/1986. He died on 28/07/1998, while he was in service leaving behind his heirs including the petitioners. On 09/02/1999, petitioner No.2 had submitted an application for her appointment on compassionate ground with the respondent No.2. No action was taken by the respondents on the said application. A reminder letter dated 14/09/2004 was also issued to respondent No.2. In the first week of December, 2019, petitioner No.2 came to know that her name is excluded from the waiting list of the candidates for appointment on compassionate ground on account of crossing age of 45 years by her.

04] On 16/12/2019, petitioner No.2 submitted another application requesting respondent No.4 to consider the name of petitioner No.1 for appointment on compassionate ground with all necessary documents. On 22/01/2020, the petitioners again moved to respondent No.4 for considering the claim of petitioner No.1. Since, the respondents did not acted on the same, this petition has been filed by the petitioners for aforesaid direction.

05] Respondent Nos.2 to 4 filed their affidavit-in-reply, *inter alia*, contending that petitioner No.2 had first time applied in the year 2004 for compassionate appointment and she was put on waiting list. At that time, no vacancy was available in the department as per the roster. Since, she crossed the age of 45 years, her name came to be removed. Now, in place of her, name of legal representative cannot be considered in the wake of Government Resolution dated 20/05/2015. It is also contended that the petition suffers from delay and laches, since the deceased employee died in the year 1998 and the petition has been filed after 22 years. Therefore, the petition needs to be rejected.

06] Heard learned Counsel Mrs. R.D. Raskar for the petitioners. She vehemently submitted that the deceased employee was serving with

respondent Nos.2 to 4 and, since, he died while he was in service, respondent Nos.2 to 4 ought to have considered the claim of petitioner No.2 for her appointment on compassionate ground. They did not consider the claim of petitioner No.2 for considerable period. After the name of petitioner No.2 was removed from the waiting list for her appointment on compassionate ground, petitioner No.2, who is daughter of petitioner No.1, applied for her appointment in place of her mother, the petitioner No.2. According to her, the respondents are deliberately not appointing them on compassionate ground. It is also submitted that as per the policy of the State Government, they ought to have considered the name of petitioner No.1 for appointment on compassionate ground. To support her contention, she seeks to rely on the cases of *Fertilizers and Chemicals Travancore Ltd. and Others vs. Anusree K.B.*, reported in *2022 SCC OnLine SC 1331* and *State of Maharashtra and Another vs. Madhuri Maruti Vidhate*, reported in *2022 SCC OnLine SC 1327*.

07] Learned Counsel Mr. D.V. Mahajan for respondent Nos.2 to 4 submits that since there was no vacancy, petitioner No.2 could not be appointed initially. According to him, even the application for appointment on compassionate ground was made by petitioner No.2 after six years of death of her husband. According to him, since she had crossed the age of 45 years, her

name was deleted from the waiting list maintained by respondent Nos.2 to 4 for appointment of the legal heirs on compassionate ground. There is no provision that the name of other legal heir be substituted in place of the earlier legal heir after completing the age of 45 years. He also submits that there is a considerable delay in approaching before this Court by the petitioners, therefore, the petition is hit by delay and laches and sought rejection of the petition.

08] At the outset, we may mention here that in the matter of public employment, the appointments shall be made strictly on the basis of invitations/advertisement to general public. There is no other mode of appointment on the public employment. The public authorities are not allowed to follow any other procedure other than laid down by the Rules, they have to adhere strictly to the procedures. However, the only exception to depart from the general rule is appointment on compassionate ground, which is created in favour of dependents of an employee, who died in harness leaving his family in penury and without having the source of livelihood. In such cases, considering the financial condition, a provision is made to provide gainful employment to one of the dependents of the deceased employee, who may be eligible for such an employment to overcome unexpected

circumstances of financial crunch in case of death of earning member of family. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crises and to relieve the family of financial destitution.

09] Having found the object of the scheme of appointment on compassionate ground of one of the dependents of deceased employee, who died in harness, let us turn to the case in hand.

10] Admittedly, the deceased employee was working with respondent Nos.2 to 4, who died while he was in service in the year 1998. Though, petitioner No.2 filed an application for her appointment on compassionate ground, on her completing the age of 45 years, her name came to be deleted from waiting list maintained by respondent Nos.2 to 4 for appointment on compassionate ground. Petitioner No.1 filed her application on 16/12/2019 for considering her name for appointment on compassionate ground in place of her mother.

11] Perusal of cause title of this petition shows that petitioner No.1 in the year 2021 was aged about 32 years old and thus she became major in the year 2005, but she applied almost 14 years after she became major. Be that as

it may, the fact remains that the object of appointment on compassionate ground is to help the family to tide over the sudden crises and to give relief against financial destitution. Here is the case, where the deceased employee died in the year 1998 and almost 24 years have been lapsed. After a period of 24 years from the death of the deceased employee, the petitioner No.1 will not be entitled to be appointed on compassionate ground. The reason is that by passage of time, the sudden crises efface. The purpose for which the compassionate appointments are to be made does not remain there by efflux of time. If such appointments are allowed to be made after gap of a long period, it will be against the object and purpose for which the appointment on compassionate ground is provided. Therefore, we are not inclined to grant relief to the petitioner No.1 to be appointed on compassionate ground. 0

12] The petitioners as well as the respondents relied on the same decisions of the Supreme Court in the cases of *Fertilizers and Chemicals Travancore Ltd.* and *Madhuri Maruti Vidhate* (*supra*), wherein it has been held that the object of the scheme of employment on compassionate ground is to enable the family to tide over the sudden crises. Ultimately, in both cases, the Supreme Court has held that after a numbers of years from the death of the deceased employee, the dependents of deceased employee shall not be entitled to appointment on compassionate ground. Therefore, these cases will not be helpful to the petitioners.

13] Under the facts and circumstances of the case, narrated herein above, petitioner No.1 is not entitled to be appointed on the compassionate ground. Therefore, the writ petition fails and, accordingly, is dismissed.

14] Rule is discharged with no order as to costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)

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