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

WRIT PETITION NO. 3187 OF 2022

Shubham S/o Surendra Kumar Ishrawat,
Aged about 24 Years, Occ : Student,
R/o Bhanpur, Post Dongargaon,
Taluka and District Gondia.

..... PETITIONER

// VERSUS //

1. State of Maharashtra,
Through its Secretary,
Rural Development, Mantralaya,
Mumbai -32.
2. Chief Executive Officer,
Zilla Parishad, Gondia.
3. The Collector,
Collectorate, Gondia,
District Gondia.
4. Block Development Officer,
Panchayat Samiti Aamgaon,
District Gondia.

.... RESPONDENTS

Ms. Naziya Pathan, Advocate for petitioner.
Mr. Zaheer, Advocate h/f Mr. Abhijit Parihar, Advocate for
respondent Nos.2 and 4.
Mr. M. K Pathan, AGP for respondent /State.

CORAM : AVINASH G. GHAROTE AND
URMILA JOSHI-PHALKE, JJ.
RESERVED ON : 30.08.2023
PRONOUNCED ON : 03.10.2023

JUDGMENT : [PER: URMILA JOSHI-PHALKE, J.]

1. **RULE.** Rule made returnable forthwith.

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2. The matter is finally heard by the consent of the parties.

3. By this petition, the petitioner is seeking the direction to the respondents to consider the claim of the present petitioner for the compassionate appointment. As per contention of the petitioner, petitioner is son of deceased employee Surendra Kumar Ishrawat who was working as a Headmaster with the respondent No.2, Zilla Parishad, Gondia. The deceased Surendra Kumar Ishrawat while discharging his duty on 07.08.2012 expired. After the death of Surendra Kumar his wife Sangita had applied for appointment on compassionate ground within prescribed period on 06.12.2012. Accordingly, her name was included in the waiting list for appointment on compassionate ground. During the year 2012-2028 no appointment was granted to the mother of the petitioner, therefore, she had made the representation to the respondent authorities on 13.10.2016 for substitution of name of her son to be included in the waiting list. Thereafter, the petitioner has also made a representation to respondent No.4 for including his name in the waiting list. Though, they have diligently taken the follow up for appointment but no steps are taken by the respondents to substitute the name of the petitioner in the waiting list. On 02.02.2017 reply was given to the petitioner's mother contended that there is no provision for substitution of name. The name of the mother of the petitioner was deleted from the waiting list because she had attained the age of 45 years and now in

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view of policy she is not eligible for appointment on compassionate ground. As per contention of the petitioners, the respondent authorities neglected their proposal for appointment on compassionate ground which is in contravention of the legitimate right of the petitioner and *dehors* the scheme of compassionate appointment and therefore, preferred this petition for directions to the respondent No.2 to consider the petitioner's application for grant of compassionate appointment.

4. The respondent Nos.2 and 4 denied the entire contentions of the petitioners on the ground that there is no provision in the policy of the substitution as wife of the deceased who has initially filed an application has attained the age of 45 years, after completion of 45 years her name is deleted from the waiting list and therefore, the writ petition deserves to be dismissed.

5. We have heard learned Counsel Ms. Pathan for the petitioner who questions the denial of the appointment of the petitioner in Class-IV category with the respondent No.4 on compassionate appointment. She stated that the death of the deceased was occurred on 07.08.2012 therefore, policy of 2010 is applicable. In view of policy of 2010, the present petitioner is entitled for the compassionate appointment. The reply given by the respondent Nos.2 and 4 to the

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petitioner that there is no provision of substitution is against the public policy therefore, directions are required to the respondents to include the name of the present petitioner in the waiting list and to provide him appointment on compassionate basis.

6. Per contra, learned Counsel learned Counsel Shri Zahir on behalf of Shri Abhijit Parihar, learned Counsel for respondent Nos.2 and 4 submitted that there is no policy to substitute the name of the petitioner in the name of his mother.

7. Learned Counsel Ms. Pathan also reiterated contention and submitted that compassionate appointment is claimed by the petitioner as a right. Per contra, learned AGP Shri M. K. Pathan for the State submitted that the object of granting compassionate appointment is to enable the family members of a deceased/incapacitated employee to tide over the sudden financial crises, appointments on compassionate ground should be made immediately to redeem the family in distress. None can claim compassionate appointment by way inheritance. Compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all the aspirants. He submitted that as there is no provision as to substitution no such directions can be issued and prays for dismissal of the petition.

8. Learned Counsel for the petitioner placed reliance on **Supriya Suresh Patil @ Sow Supriya Pratik Kadam Vs. State of Maharashtra and others**, reported in **2018 (4) SLR 771 (S.C.)**.

9. Having heard both the sides. On perusal of the facts in the present case, it is undisputed that deceased Surendra Kumar was serving as a Headmaster with the respondent No.2. He died on 07.08.2012. Initially, his wife filed an application for appointment on compassionate ground. As she attained the age 45 years, in view of the policy her name was removed from the waiting list. Before her name is removed from the waiting list, she had filed an application to substitute the name of the present petitioner in the waiting list, which was denied by the respondents on the ground that there is no provision of substitution, in view of the policy and did not consider the prayer of the present petitioner to conclude the name in the waiting list.

10. There is no dispute that public employment in offices or posts under the State or its instrumentalities or any other authority covered by Article 12 of the Constitution must be in accordance with statutory rules or in their absence, in tune with the policies framed for regulating such appointments. The whole object of granting compassionate appointment by an employer, being intended to enable

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the family members of a deceased/incapacitated employee to tide over the sudden financial crises, appointments on compassionate ground should be made immediately to redeem the family in distress. There is no doubt that the claim of compassionate appointment is not by way of inheritance. It is also not a right but it is a concession. It is also well settled that an application for compassionate appointment has to be made immediately upon death/incapacitation and in any case within a reasonable period thereof or else a presumption could be drawn that the family of deceased/incapacitated employee is not in immediate need of financial assistance.

11. The Hon'ble Apex Court in **Umesh Kumar Nagpal Vs. State of Haryana and others (1994) 4 SCC 138** observed that the object of granting compassionate employment is to enable the family of deceased government employee to tide over the sudden crises by providing gainful employment to one of the dependants of the deceased who is eligible for such employment. That mere death of an employee in harness does not entitle his family to such source of livelihood, and the Government or the public authority concerned employer has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crises, that a job is to be offered to the eligible member of the family,

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provided the scheme or rules provide for the same. The Apex Court further clarified in the said case that compassionate appointment is not a vested right which can be exercised at any time after the death of a government servant. The object being to enable the family to get over the financial crises which it faces at the time of the death of the sole breadwinner. The compassionate employment cannot be claimed and offered after lapse of considerable amount of time and after the crises is over come.

12. The Full Bench of this Court in **Writ Petition No.3907 of 2021 (Smt. Nilima Raju Khapekar Vs. The Executive Director, Bank of Baroda, Baroda and others)** decided on 22.04.2022 had considered the object of compassionate appointment and by referring various judgments held that the whole object of granting compassionate appointment by an employer was intended to enable the family members of a deceased/incapacitated employee to tide over the sudden financial crisis. It is further held by this Court that an employer cannot be compelled to make an appointment on compassionate ground contrary to the policy. The satisfaction that the family members have been facing financial distress and that an appointment on compassionate ground may assist them to tide over such distress is not enough; a dependent must fulfil the eligibility criteria for appointment. The Full Bench of this Court further

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held that it would be the obligation of the employer to assess and evaluate the financial condition of the family of the deceased employee and only upon a satisfaction being reached that the family, being indigent, needs immediate succor by way of an appointment on compassionate ground, it may proceed to determine eligibility on the other counts.

13. Admittedly, the death of the deceased employee took place long back on 07.08.2012. The wife of the deceased had applied for employment on 06.12.2012. On 13.10.2016, the present petitioner filed an application for substitution. He preferred various representations and the reply given by the respondents show that there is no policy for substitution and hence refused. Considering the intent of the policy for providing compassionate appointment, any delay would clearly defeat the policy. In the instant matter, father of the petitioner passed away in the year 2012. It is not in dispute that all pensionary benefits on account of his demise are received by his wife who initially had applied for compassionate appointment on 06.12.2012. Since there was no vacancy, no appointment was granted. On attaining the age of 45 her name was removed from the waiting list, in the year 2018.

14. In **Fertilizers and Chemicals Travancore Ltd. and others Vs. Anusree K. B. 2022 LiveLaw (SC) 819**, the Hon'ble Apex Court has held in para 9.1 and 9.2 as under:

“9.1 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided.”

9.2 Under the circumstances, both, the learned Single Judge as well as the Division Bench of the High Court have committed a serious error in directing the appellants to reconsider the case of the respondent for appointment on compassionate ground. The impugned judgment and order passed by the High Court is unsustainable.”

15. The same position is reiterated in **The State of West Bengal Vs. Debabrata Tiwari and others Etc. Etc. 2023 LiveLaw (SC) 175** in para 7.5 in the following words:

“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.”

16. It is thus apparent that delay either in making of the application or in the appointment on compassionate basis would defeat the very purpose and object of the policy and take away the plea of necessity and immediate succor, for the reason that since for that duration as the family of the deceased was able to sustain themselves, granting of compassionate appointment after several years/decade would foster a backdoor entry and defeat the object of providing public employment on merits.

17. Considering the object underlying the provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crises, now it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, after lapse of 10 to 11 years, as the crises which arose on account of death of a breadwinner has been overcome. By considering the application after lapse of so much period, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.

18. It is, thus, apparent that any delay either in making of the application or in the appointment on compassionate basis would defeat the very purpose and object of the policy and take away the plea of necessity and immediate succor, for the reason that since for that duration as the family of the deceased was able to sustain themselves, granting of compassionate appointment after several years/decade

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would foster a backdoor entry and defeat the object of providing public employment on merits.

19. In that view of the matter, we are not inclined to entertain the present writ petition. The same is, therefore, dismissed. No order as to costs.

Rule is discharged.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G. GHAROTE, J.)