

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

WRIT PETITION NO. 1541 OF 2023

Vilas S/o Suresh Sade

..VS..

Assistant Registrar, Co-operative Society, Amravati and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.O. Ahmed, Advocate for the petitioner.

Shri A.A. Madiwale, Assistant Government Pleader for the respondent No.1.

Shri Abhay Sambre, Advocate for respondent No.2.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ

DATED : JULY 03, 2023

Heard.

2. The mother of the petitioner was employed with the respondent No.2 – Co-operative Bank. She was to superannuate on 31.05.2022. However, while in service she was diagnosed with the cancer and hence on 22.12.2020 she moved an application seeking to resign from her job on the post of peon. In the said application she categorically stated that she was suffering for the last six to seven months and also operated but she was not in a position to discharge her duties. The resignation of the petitioner's mother came to be accepted on 11.01.2021. The petitioner sought appointment on compassionate basis pursuant to his mother ceasing to be in service. The said application was not favourably considered by the Bank on the ground that the petitioner's mother had resigned from service and hence was not eligible for compassionate appointment.

3. The learned counsel for the petitioner submits that undisputedly the petitioner's mother was suffering from cancer. She was issued certificate dated 10.02.2021 by the Cancer Care Centre, Nagpur certifying that the only reason

for tendering the resignation was that the petitioner's mother was unable to discharge her duties on account of such ailment. After submitting the application dated 22.12.2020 the Bank ought to have forwarded her case to the Medical Board for her medical examination. By failing to do so the petitioner cannot be deprived of the benefit of compassionate appointment. Placing reliance on the decision in *Sheroo Shapurji Vs. Bank of India, Mumbai (2018(1) Mh.L.J. 586)* it is submitted that the resignation of the petitioner's mother ought to be treated as voluntary retirement from service and benefit of compassionate appointment ought to be extended to the petitioner.

4. The learned counsel for the respondent No.2 Bank has referred to the Policy for Compassionate Appointment and Clause (1)(b) thereof. As per the said Policy an employee who is on long leave on account of mental/physical ailment and who has been certified as unfit by the Medical Board is entitled to seek compassionate appointment. Since the petitioner's mother has tendered resignation the petitioner would not be entitled to seek compassionate appointment as the requirement of Clause (1)(b) had not been met. The case of the petitioner was duly considered on 18.08.2022 and the petitioner was not found eligible for such appointment.

5. On hearing the learned counsel for the parties we find that on 22.12.2022 the petitioner's mother tendered her resignation from duty. In the resignation letter she has referred the illness suffered by her as well as the certificate issued by the Consultant on 10.02.2021. As per the Policy for Compassionate Appointment framed by the Bank, the eligibility for seeking compassionate appointment is being declared unfit by the Medical Board on account of mental/physical ailment. There is no certification by the Medical Board in favour of the petitioner's mother. It is true that the petitioner's mother stated that she was suffering from cancer and that was the reason for resigning from service. It is also the fact that shortly thereafter the petitioner's mother

expired. However appointment on compassionate ground being an exception to a regular procedure of recruitment, the requirements prescribed in the relevant Policy have to be fully satisfied. The Policy is clear and it requires certification by the Medical Board to be unable to continue in service. In absence of such certification the decision of the Bank in finding the petitioner ineligible cannot be faulted with. Even if the case of the petitioner's mother is treated to be one of voluntary retirement instead of resignation, still the requirement of Clause (1)(b) would not be satisfied. The decision relied upon does not support the case of the petitioner in these facts. We therefore do not find any reason to interfere. The Writ Petition is dismissed. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)

Kirtak