



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

WRIT PETITION NO.1909 OF 2020

Shri Abhijit s/o Manikrao Shrikhande,
Aged about 30 years, Occupation – Nil
R/o. Shikshak Colony, Bhonde Plot,
Near Rest House, Anjangaon Surji,
Tq. Anjangaon Surji, District Amravati

...PETITIONER

VERSUS

1. State of Maharashtra,
through Department of General
Administration, through its Secretary,
Mantralaya, Mumbai – 32
2. Zilla Parishad, Amravati
through its Chief Executive Officer
3. Deputy Chief Executive Officer,
Zilla Parishad, Amravati

...RESPONDENTS

Mr. S.S. Shingane, Advocate for the petitioner.
Mr. S.M. Ukey, Addl.G.P. for respondent No.1/State.
Mr. Milind G. Rathi, Advocate for respondent Nos.2 and 3.

**CORAM : AVINASH G. GHAROTE &
URMILA JOSHI-PHALKE, JJ.**

RESERVED ON : SEPTEMBER 07, 2023

PRONOUNCED ON : OCTOBER 04, 2023

JUDGMENT (Per Urmila Joshi-Phalke, J.)

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

2. By this writ petition, the petitioner is seeking declaration that he is eligible for compassionate appointment in respondent No.2 – Zilla Parishad, Amravati and direction to respondent No.2 to include the name of the petitioner in the list of the eligible candidates for compassionate appointment. The father of the petitioner Shri Manikrao Shrikhande was working as Assistant Teacher in Zilla Parishad Primary School who died on 30th December, 2009. As per the contention of the petitioner he is qualified as B.Sc. B.Ed. and Diploma in Construction Supervisor. In view of Government Resolution dated 16th October, 1994 present petitioner is eligible for the appointment on compassionate ground. The subsequent Government Resolution dated 21st September, 2017 also makes the present petitioner eligible for the appointment on compassionate ground. Therefore, he filed an application on 6th April 2010 to the Education Officer, Zilla Parishad, Amravati for seeking compassionate appointment. Respondent No.2- Zilla Parishad published waiting list wherein the name of the petitioner was at serial No.51. The appointment to the petitioner was refused by the Education Officer on the ground that the brother of the petitioner is already in service, therefore, the petitioner is not complying with the requirement as there is no need of immediate succour to the petitioner or a financial crisis.

3. As per the contention of the present petitioner, his brother is residing separately and not maintaining the family. During the pendency of proposal of compassionate appointment he was appointed in the State Bank of India. However, as he is residing separately and not maintaining the family, the petitioner who is residing along with his mother is facing the financial crisis. In view of Government Resolution, the policy was made by the Government to assist the family members of the deceased employee for their immediate succour which was not considered by the Education Officer while considering the claim of compassionate appointment. On 31st December, 2018, respondent No.2 issued notice by which information was sought whether any family member was recruited in Government or Semi-government employment. On 26th March, 2019, respondent No.2 again issued notice and called the respondents for hearing as report of the Block Development Officer was received on 5th April, 2019. The petitioner was present before respondent No.2 for hearing along with consent letter. However, without considering the fact that the family of the deceased employee is facing financial crisis, on 11th April, 2019 proposal for compassionate appointment was rejected on the ground that brother of the petitioner is in Government service and there is no emergent need of the family. Being aggrieved with the same, present petition is preferred by the petitioner stating that the order passed by the Education Officer refusing

the compassionate appointment to the petitioner is arbitrary, illegal and against the policy of the Government which is liable to be quashed and set side.

4. Said contention is opposed by the learned Assistant Government Pleader on the ground that the enquiry report received from the Block Development Officer, Panchayat Samiti, Achalpur on 26th March, 2019 shows that the family member of the petitioner is already in Government service, the object of the compassionate appointment to give immediate succour to the family which is now not in existence and rightly rejected the claim. It is further submitted that mother of the petitioner had already received the pensionary benefits and the other emoluments which she was entitled to receive on account of death of the employee. As the immediate succour is not required now, therefore, the Chief Officer of Zilla Parishad has rightly rejected the application of the petitioner for compassionate appointment.

5. Heard Mr. S. Shingane, learned Counsel for the petitioner, Mr. S.M. Ukey, learned Additional Government Pleader for respondent No.1/State and Mr. M.G. Rathi, learned Counsel for respondent Nos.2 and 3.

6. Shri Shingane, learned Counsel for the petitioner submitted that the object behind the compassionate appointment is to give immediate succour to the family of the deceased employee. Admittedly, at the time of filing the application, nobody was in the service and the application was filed within time. The policy of 1994 gives right to the petitioner for compassionate appointment which was not considered by the Chief Officer, Zilla Parishad, Amravati. By the Government Resolution dated 21st September, 2017 also the petitioner has right for the compassionate appointment which was not considered by the Chief Officer of Zilla Parishad, Amravati. He submitted that the application of the petitioner was in time. He was included in the waiting list also and subsequently, his name was deleted on the ground that his brother was appointed in the State Bank of India. In fact, his brother is staying separately and now he is not the part of the family. The financial requirement is still in existence, therefore, the petitioner is required to be considered for the compassionate appointment. Despite there is clear cut provision for the compassionate appointment in the Government Resolution, the Chief Officer has not considered the same and wrongly rejected the prayer of the petitioner for compassionate appointment.

7. *Per Contra*, learned Assistant Government Pleader submitted that the object behind providing appointment on compassionate ground

by way of exception to the general rule of appointment. The object is to give immediate succour to the family of the deceased employee. Therefore, whether the family is indigent or not is to be ascertained, and therefore, enquiry was held and it was revealed that the family member of the petitioner is in a Government service and now the aspect of the immediate succour is not in existence, therefore, the compassionate appointment is rightly rejected. Learned Counsel for respondent No.2 endorsed the same contention and submitted that the order passed by the Chief Officer, Zilla Parishad, Amravati.

8. There is no dispute that public employment in offices or posts under the State must be in accordance with statutory rules or in their absence, as per the instructions of the executive issued for regulating recruitment. The whole object of granting compassionate employment by an employer being intended to enable the family members of a deceased employee to tide over the sudden financial crisis, appointments on compassionate grounds should be made immediately to assist the family in distress. As far as the legal position is concerned, there is no dispute that none can claim a compassionate appointment by way of right or inheritance. It is a concession and not a right and the criteria laid down in the Rules must be satisfied by all the applicants who are the aspirants. An employer cannot be compelled to make an appointment

on compassionate ground contrary to its policy. Therefore, 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. The dependent must fulfill the eligibility criteria for such appointment. There is no dispute as far as the legal proposition of law is concerned as settled by the Hon'ble Apex Court for appointment on compassionate ground that policy relevant at the time of death of the deceased employee is required to be considered and not the subsequent policy.

9. In the light of above legal position, if the case of the present petitioner is considered there is no dispute that father of the petitioner was serving as an Assistant Teacher in Zilla Parishad Primary School. He died on 30th December, 2009. Thereafter the petitioner approached to the Education Officer by filing an application on 6th April, 2010 for seeking compassionate appointment on the establishment of Zilla Parishad, Amravati. There is no dispute as far as the educational qualification is concerned that the application was initially taken into consideration by respondent No.2 - Zilla Parishad and the name of the present petitioner was included in the waiting list at serial No.51. During the pendency of the proposal of the present petitioner, his brother - Aniket was appointed in State Bank of India. While considering the

proposal for appointment on compassionate ground to ascertain the financial condition of the present petitioner, respondent No.2 inquired with the relevant persons and it revealed that the brother of the petitioner namely Aniket was appointed in the State Bank of India. It further revealed that the mother of the present petitioner received the pensionary benefits as well as amount towards gratuity, GPF, Group Insurance Scheme, etc. as well as pension was also sanctioned to her. The Block Development Officer has submitted his report from which it was reflected that now the issue regarding the financial succour is not in existence, and therefore Chief Executive Officer, Zilla Parishad, Amravati decided to delete the name of the present petitioner.

10. Learned Counsel placed reliance on the Government Resolution dated 26th October, 1994 which shows that the policy to appoint the dependents of the deceased employee was introduced by the Government with intention to render some assistance to the family members of the employees who are left in distress due to the death of the said employee. The Schedule 'A' of the Government Resolution which is reproduced hereunder :

"परिशिष्ट "अ"

1. महाराष्ट्र राज्य शासनाच्या सर्व कार्यालयात अनुकंपा कारणास्तव करावयाच्या नेमणुकांना हे नियम लागू राहतील.
2. खालील प्रकारांमध्ये मोडणाऱ्या शासकीय कर्मचाऱ्यांचे (रूपांतरित स्थायी व अस्थायी आस्थापनेवरील कर्मचारी वरून)

3. (अ) येथील नातेवाईक या नियमानुसार अनुकंपा कारणास्तव शासकीय सेवेत नेमणुकीसाठी पात्र असतील :-

(अ) शासकीय सेवेत असतांना दिवंगत झालेले कर्मचारी,

(ब) क्षय, कर्करोग इत्यादी गंभीर आजारामुळे, सक्षम वैद्यकीय अधिकाऱ्यांच्या प्रमाणपत्रानुसार अकाली निवृत्त झालेले अधिकारी/कर्मचारी,

(क) मानसिक किंवा शारीरिक विकलांगता आल्याने, सक्षम वैद्यकीय अधिकाऱ्याने पुढील सेवेसाठी अक्षम ठरविल्याने, अकाली निवृत्त करण्यात आलेले किंवा वरील कारणास्तव सेवेतून काढून टाकण्यात आलेले कर्मचारी,

(ड) शासकीय सेवेत कर्तव्य बजावीत असताना अपघाताने अपंग झालेले परंतु महाराष्ट्र नागरी सेवा (निवृत्ती वेतन) नियम 1982 मधील नियम 72

(3) अनुसार पर्यायी पद देऊ करूनही ते न स्वीकारता सेवानिवृत्ती स्वीकारणारे कर्मचारी.

3. (अ) दिवंगत/अकाली निवृत्त शासकीय कर्मचाऱ्यांची पती/पत्नी, मुलगा किंवा अविवाहित मुलगी अथवा मृत्युपूर्वी/अकाली सेवानिवृत्ती पूर्वी कायदेशीर रित्या दत्तक घेतलेला/घेतलेली मुलगा/अविवाहित मुलगी ही नियमानुसार नेमणुकीस पात्र नातेवाईक मानण्यात येतील. याशिवाय अन्य कुठल्याही नातेवाईकास या योजनेचा फायदा मिळणार नाही.

(ब) सदर नेमणूक शासकीय कर्मचाऱ्याच्या फक्त एकाच नातेवाईकास देता येईल.

4. (अ) अनुकंपा तत्वावर संबंधित नातलगाची शैक्षणिक पात्रता व वय यानुसार राज्य शासनांतर्गत कोणत्याही गट "क" व गट "ड" श्रेणीच्या सरळ सेवा प्रवेशाने भरल्या जाणाऱ्या पदावर नियुक्ती करता येईल. या नियमानुसार नियुक्ती मिळण्यासाठी महाराष्ट्र लोकसेवा आयोगाच्या स्पर्धा परीक्षेस बसण्याची आवश्यकता नाही. तसेच वरील नियमानुसार सदर पदांवर नेमणूक करण्यासाठी महाराष्ट्र लोकसेवा आयोगाचा सल्ला घेण्याची आवश्यकता नाही. मात्र, लोकसेवा आयोगाच्या कक्षेतील पोलीस उपनिरीक्षक, विक्रीकर निरीक्षक, मोटार वाहन उपनिरीक्षक, रेंज वन अधिकारी, कनिष्ठ अभियंता, सहाय्यक वैद्यकीय अधिकारी इत्यादी गट "क" मधील कार्यकारी (एक्झिक्यूटिव्ह) पदांवर तसेच मंत्रालयातील सहाय्यक पदांवर नियुक्ती देता येणार नाही.

(ब) संबंधित पदांसाठी विहित शैक्षणिक पात्रता आणि निम्न वयोमर्यादा याबाबतच्या अटी या नेमणुकांसाठी कटाक्षाने पाळण्यात येतील. परंतु उच्च वयोमर्यादेची अट राहणार नाही.

(क) तथापि, दिवंगत/अकाली निवृत्त कर्मचाऱ्यांची पत्नी शैक्षणिक पात्रते व्यतिरिक्त इतर अटी पूर्ण करित असल्यास तिच्या बाबतीत गट "ड" मध्ये नेमणुकीसाठी शैक्षणिक पात्रतेची अट शिथिल करता येईल.

5. (अ) अनुकंपा कारणास्तव नेमणुकीसाठीचा अर्ज शासकीय कर्मचारी दिवंगत/अकाली निवृत्त झालेल्या दिवसापासून पाच वर्षांचे मुदतीत करणे आवश्यक असेल.

(ब) दिवंगत/अकाली निवृत्त कर्मचारी ज्या कार्यालयात काम करित होता, त्या कार्यालयातील संबंधित नियुक्ती प्राधिकारी या नियमानुसार नेमणूक देण्यास सक्षम राहिल. त्यासाठी त्याने निवड समितीचा सल्ला घेणे आवश्यक नाही. मात्र, नातेवाईकाने सदर प्राधिकाऱ्यांकडे उपरीनिर्दिष्ट मुदतीत नेमणुकीसाठी अर्ज करणे आवश्यक राहिल.

6. (अ) संबंधित कार्यालयात आवश्यक पद उपलब्ध नसेल तर कार्यालय प्रमुखांनी त्या जिल्ह्यातील/विभागातील इतर कार्यालयाच्या नियुक्ती प्राधिकाऱ्यांकडे संपर्क साधावा व ज्या कार्यालयात आवश्यक पद उपलब्ध असेल त्या कार्यालयामध्ये नियुक्तीसाठी विचार करावा.

(ब) जे कार्यालय प्रमुख/विभाग प्रमुख त्यांच्या कार्यालयात/विभागात उपलब्ध असलेल्या पदांची माहिती या माहितीची विचारणा करणाऱ्या कार्यालय प्रमुखास/विभाग प्रमुखास देणार नाहीत, अशा कार्यालय प्रमुख/विभाग प्रमुखांविरुद्ध शिस्तभंगाची कारवाई करण्यात येईल.

(क) सर्व कार्यालय प्रमुखांनी/विभाग प्रमुखांनी त्यांच्या कार्यालयात/विभागात अनुकंपा तत्वावर नियुक्ती करता आलेल्या एकूण अर्जांची संख्या प्रत्यक्षात नियुक्ती देण्यात आलेल्या उमेदवारांची संख्या, तसेच अनुकंपा तत्वावर नियुक्ती करिता संबंधित कार्यालयात/विभागात नियुक्ती केलेल्या/प्रतिक्षा यादीवर असलेल्या उमेदवारांची माहिती सोबतच्या "क" विवरणपत्रात संबंधित प्रशासकीय विभागाकडे दर सहा महिन्यांनी पाठविणे बंधनकारक राहिल. या नियमानुसार असा 31 डिसेंबर 1993 ची स्थिती दर्शविणारा सहामाही अहवाल 15 जानेवारी 1995 पर्यंत पाठवावा.

7. (अ) अनुकंपा तत्वावर नियुक्ती करिता मासिक उत्पन्नाची तसेच ठोक रकमेची मर्यादा यापुढे राहणार नाही.

(ब) अनुकंपा तत्वावर नियुक्ती देताना असे प्रस्ताव शासन सेवेतील रोजगारावर असलेली मर्यादांच्या योजनेच्या मागील भूमिका लक्षात घेऊन जो कर्मचारी मृत झाला त्याच्या कुटुंबीयांना तत्काळ उद्भवणाऱ्या आर्थिक पेच प्रसंगावर मात करण्याच्या उद्देशाने विचारात घ्यावेत.

एखाद्या कुटुंबात मृत कर्मचाऱ्यांचा नातेवाईक पूर्वीच सेवेत असेल, तथापि तो त्याच्या कुटुंबातील अन्य सदस्यांना आधार देत नसेल तर अशा

प्रकरणात त्या कुटुंबाची आर्थिक परिस्थिती हलाखीची आहे किंवा कसे हे ठरवितांना नियुक्ती अधिकाऱ्याने अत्याधिक दक्षता घ्यावी, जेणेकरून सेवेत असलेला सदस्य कुटुंबाचा उदरनिर्वाह करीत नाही या नावाखाली अनुकंपा तत्वावरील नियुक्तीचा दुरुपयोग केला जाणार नाही.

यासंदर्भात नियुक्ती अधिकाऱ्याने मिळणाऱ्या निवृत्तीवेतनाची रक्कम, कुटुंबातील व्यक्तींची संख्या, त्याची मालमत्ता, दायित्व, गंभीर आजारामुळे किंवा अपघातामुळे मृत झाला असल्यास त्यासाठी करण्यात आलेला वैद्यकीय खर्च, कुटुंबातील मिळवल्या व्यक्ती इत्यादी बाबी विचारात घेणे अपेक्षित आहे.

8. उपरोक्त 4(क) व्यतिरिक्त कोणत्याही अटी शिथिल करण्याची शक्ती शासनाकडे राहणार नाही."

11. Learned Counsel further placed reliance on the Government Resolution dated 21st September, 2017. Undisputedly, this Government Resolution is not applicable in the case of the present petitioner as death of the deceased was on 30th December, 2009 and the application was filed on 06th April, 2010. In view of well settled legal position, the policy which was in existence at the relevant time is to be considered and any appointment on compassionate ground has to be made in terms of the scheme therein and not otherwise. Subsequently, Government Resolution dated 22nd August, 2005 was introduced and the earlier Government Resolution of 1994 was revised. In view of the said Government Resolution also the object was to give immediate succour to the family members of the employees. Thus, one of the condition which was required to be considered for appointment on the compassionate ground is that whether the family is in need of immediate succour and whether the family is in a financial distress. Therefore, the enquiry was carried

out and it revealed that now the ground of immediate succour is not in existence as one of the family member has already joined the Government service and there is assistance to the family.

12. Admittedly, the application was filed on 06th April, 2010 and the petition is filed in the year 2020 i.e. after 10 years. As observed by the Full Bench of this Court in ***Nilima Raju Khapekar Vs. Executive Director, Bank of Baroda and others, [2022(3) Mh.L.J. 441]*** that the whole object of granting compassionate employment by an employer being intended to enable the family members of a deceased/incapacitated employee to tide over the sudden financial crisis, appointments on compassionate ground should be made immediately to redeem the family in distress. While considering this aspect the Full Bench had considered various judicial decisions rendered by this Court as well as by the Apex Court and held that the family members of employee dying-in-harness have to demonstrate indigence 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. This aspect is further considered by the Hon'ble Apex Court recently in the case of ***State of West Bengal Vs. Debabrata Tiwari and ors. (AIR 2023 SC 1467)*** wherein it is observed by referring the judgment of ***Umesh Kumar***

Nagpal vs. State of Haryana, [(1994) 4 SCC 138] that the object of granting compassionate employment is to enable the family of a deceased government employee to tide over the sudden crisis by providing gainful employment to one of the dependents 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; the Government or the public authority concerned 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 crisis, that a job is to be offered to the eligible member of the family, provided the scheme or rules provide for the same. This 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. That the object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, compassionate employment cannot be claimed and offered after lapse of considerable amount of time and after the crisis is overcome. It is further held by the Hon'ble Apex Court that 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 of the death of the government employee. In the case of *Fertilizers and Chemicals Travancore Ltd. and ors. Vs. Anusree K.B. (2022 LiveLaw (SC) 819)* also the Hon'ble Apex Court has held that 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 to be provided.

13. Admittedly, the whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family the appointments by making exception to the general rule. Admittedly, a compassionate appointment is an exception to the general rule of appointment where the breadwinner dies in leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that some source of livelihood is to be provided due to which the family would be able to make their life to meet the financial crisis. Applying the law laid down by the Hon'ble Apex Court and also by this Court in various decisions to the facts of the case on hand and considering that the purpose for which the

appointment on compassionate ground is provided, the petitioner shall not be entitled to the appointment on compassionate ground after a period of 12 to 13 years from the date of demise of the deceased employee as now that immediate succour required by the family is not in existence. If such appointment is made after a period of 12 to 13 years it would be against the object and purpose for which the appointment on compassionate ground is provided.

14. Under these circumstances, the petition of the petitioner deserves to be dismissed.

15. Hence, the petition is dismissed with no order as to costs.

16. Rule stands discharged.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G. GHAROTE, J.)