

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

WRIT PETITION NO. 4416/2022

Parag s/o. Prabhakar Kumbhare

Vs.

Maharashtra State Electricity Distribution Company Limited and Anr.

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

Court's or Judge's order

.....
Mr. Akhilesh Potnis, Advocate for Petitioner.
Mr. P. V. Bawankule, Advocate with Mr. S. V. Purohit, Advocate
for Respondents 1 and 2.

CORAM : ROHIT B. DEO AND
MRS.VRUSHALI V. JOSHI, JJ.
DATED : 10.04.2023

. Heard

2. Petitioner is an Electrical Engineer, having acquired the diploma and then degree in Electrical Engineering from Rashtrasant Tukdoji Maharaj Nagpur University (Nagpur University).

3. The petitioner's mother Smt. Anusaya Kumbhare was working on the establishment of the respondent Maharashtra State Electricity Distribution Company Limited (MSEDCL) as Lower Division Clerk. She unfortunately succumbed to cancer on 28.03.2013.

4. The petitioner was 15 years old when he lost his mother. He claims that immediately after attaining majority he applied for employment on compassionate ground. It would not be necessary to refer to every development in the matter and suffice it would be if we note, that the claim of the petitioner to appointment on compassionate ground is rejected vide letter dated 30.06.2021. The rejection letter notes that as on 28.03.2013 the father of the petitioner Mr. Prabhakar Kumbhare was working as Assistant Administrative Officer on the establishment of the Regional Centre of ICAR. The petitioner contends that the extant policy does not bar the appointment on compassionate ground, and the Correction Slip dated 16.04.1975 is clearly misunderstood or misconstrued to the extent the respondents have considered the employment of the petitioner's father as relevant circumstance.

5. The respondents have filed affidavit in response dated 02.02.2023. The respondents assert that while

applying for employment on compassionate ground, there is no disclosure that the father of the petitioner was employed as a Senior Officer at a Government of India undertaking and that he superannuated on 31.12.2016. According to the respondents, it was only after an enquiry was conducted, that the employment of the father of the petitioner came to light. The respondents contend that the affidavit dated 15.12.2017 which the petitioner submitted on 15.12.2017 makes no reference to the past employment of the petitioner's father. The respondents then emphasize that the father of the petitioner is receiving monthly pension. The respondents then rely on the extant policy, particularly Correction Slip 28 and submit that the petitioner did not furnish any material to demonstrate that he is separated from the family. The respondents contend that the Ration Card submitted by the petitioner, as a fact, indicates to the contrary. Broadly, reliance is placed on the extant policy and certain recent decisions of the Hon'ble Supreme Court,

and on facts it is emphasized that after the death of the petitioner's mother the family has received Rs. 28,04,686/- as Gratuity and Contributory Provident Fund (CPF).

6. The petitioner has filed rejoinder dated 23.02.2023. The petitioner admits that his father is receiving monthly pension. The petitioner, however, contends that after the death of his mother, the father has remarried and he is required to look after his wife and aged grandmother. The petitioner admits that after the death of his mother, the family received Rs.28,04,686/- as Gratuity and CPF. The petitioner asserts that the amount of Gratuity and CPF was entirely spent in satisfying the hand loans and debts, which were incurred for the medical treatment of the deceased mother. The petitioner then claims that his father spent considerable amount in ensuring that the petitioner acquires the degree in Electrical Engineering. The petitioner then makes a grievance that there are no

job opportunities for graduates in Electrical Engineering except in Power Utility Companies.

7. The petitioner finally attributes non-application of mind to the respondents inasmuch as in his perception, the concerned officer has not applied his mind to the material on record and particularly to the fact that the deceased employee succumbed to cancer.

8. We do not appreciate the submission that Electrical Engineering graduates do not have sufficient job opportunities. Another submission which was canvassed during the course of hearing surprises, and indeed shocks us.

9. The learned Counsel for the petitioner Mr. Potnis submitted that engineering graduates from the Nagpur University do not have any future as such. While we are not making any further observation, in the interest of maintaining restraint, we do not appreciate such generalizations which are in a sense defamatory and

demeaning, not only to the University concerned, but to the thousands and lakhs of graduates from the University who have acquitted themselves well in whatever pursuit they have chosen in life.

10. Adverting to the facts, we do not find any reason to interfere with the decision of the respondents, in exercise of writ jurisdiction.

11. We are noticing a disconcerting if not disturbing trend. Undeserved candidates make hue and cry relying on the policy of appointment on compassionate ground. Submissions are canvassed as if appointment of compassionate ground is a vested right and public employment is a largess to which the legal heir of a deceased employee has a legitimate and preferential claim irrespective of the financial condition or surrounding circumstances.

12. It is well settled, and it would not be necessary to burden the order by referring to the plethora of the

decisions holding the field, that appointment on compassionate ground is an exception to the concept of equality and open competition envisaged under Articles 13 and 16 of the Constitution of India. Appointment on compassionate ground can never be a right, much less vested right, *de hors*, the fact situation. The object is to provide succour to the family of the deceased employee, who faces the prospect of being thrown on the streets. It is only to ensure that the family is not rendered destitute that compassionate appointment is envisaged. Any other view, may render scheme for appointment on compassionate ground vulnerable as violative of the constitutional philosophy.

13. We have considered the submission canvassed on the touchstone of the articulation of the Hon'ble Apex Court extracted *supra*.

14. We are more than satisfied, that no case for appointment on compassionate ground is made out. The employee expired in 2013. The father of the

petitioner admittedly superannuated as a Class-I Officer on 31.12.2016 and within a short time, the petitioner has applied under the scheme for compassionate appointment. Even according to the petitioner, after he lost his mother, considerable amount is spent by his father in ensuring that the petitioner graduates as an Electrical Engineer. A family in distress would not have survived, much less educated the petitioner by spending considerable amount, for such length of time. In our considered view, in view of the admitted position that the family received Rs.28,04,686/-, that the father of the petitioner superannuated only on 31.12.2016 as Assistant Administrative Officer and receives pension, there is absolutely no case made out for compassionate appointment. Appointing the petitioner on compassionate ground shall do immense injustice to persons who are jobless, and there are thousands and lakhs of them, and who are ready and willing to test their mettle in open competition. We cannot, and will not, reduce schemes for appointment on compassionate

basis to an indirect backdoor entry in public employment.

15. The petition stands dismissed with costs.

(MRS.VRUSHALI V. JOSHI, J.)

(ROHIT B. DEO, J.)

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