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

WRIT PETITION NO.8153 OF 2018

1. Smt. Rajshree wd/o Sunil Naidu,
Aged about 49 years, Occ : Nil.
2. Mayur s/o late Sunil Naidu,
Aged about 27 years, Occ : Nil
Both R/o Qutr. No.1/1,
Infront of ESIC Hospital,
Somwari Quarter, Nagpur.

..... PETITIONERS

// VERSUS //

1. Union of India,
Ministry of Consumer Affairs,
Food and Public Distribution,
New Delhi – 110001
Through its Secretary.
2. Food Corporation of India,
Church Gate, Mumbai – 400 020,
Through its Zonal Manager.
3. Food Corporation of India,
Church Gate Mumbai – 400 020,
Through its Sr. Regional Manager/
General Manager.
4. Food Corporation of India,
Ajani Nagpur,
Through its Regional Manager.

.... RESPONDENTS

Corrected as per
Court's order
dated 20/10/2023.

Shri S. D. Shukla, Advocate for petitioners.
Shri S. S. Deshpande, Advocate for respondent Nos.2 to 4.

CORAM : AVINASH G. GHAROTE AND
URMILA JOSHI-PHALKE, JJ.
RESERVED ON : 31.08.2023
PRONOUNCED ON : 03.10.2023

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

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

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

3. The present writ petition is filed to challenge the communication of respondent No.3 dated 22.06.2017 by which the application for compassionate appointment of the petitioners is rejected.

4. The petitioner No.1 is the wife and petitioner No.2 is the elder son of Shri Sunil s/o Shriram Naidu. Deceased Sunil Naidu was employed on the post of Watchman from 02.07.1991 till the date of his death on 03.12.2001 with the respondent No.4 under the control of respondent Nos.1, 2 and 3. Shri Sunil Naidu died on 03.12.2001 leaving behind petitioners, one son and one daughter. As per the contention of the petitioners, deceased was only bread earner of the family. After the death of the deceased Sunil, petitioner No.1 – wife applied for employment on compassionate basis which was not considered. Petitioner No.2 filed an application for substitution of his name on waiting list which was considered in the year 2013. Thereafter, on 21.03.2015 petitioners were informed that claim of the petitioner No.2 for considering him for employment on a compassionate basis was rejected. The said communication was challenged by the

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petitioners before the learned Central Administrative Tribunal, Bench at Nagpur by filing Original Application No.158/2016, which was allowed. The learned Central Administrative Tribunal directed the respondents to consider representation of the petitioners in eight weeks. Accordingly, petitioners have made representation which was rejected on 22.06.2017, assigning reason that the petitioner No.2 is under graduate as well as he has not attained the benchmark which was fixed by the respondents for the appointment of the legal heirs of the employees on compassionate basis. Being aggrieved with the said, present petition is filed.

5. It is contended by the petitioners that the action of not considering the petitioners' claim for compassionate appointment is illegal, arbitrary and *mala fide* against the policy of the State framed for appointment on compassionate ground and prayed for directions to the respondents for considering the claim of petitioners for appointment on compassionate ground.

6. The petition is opposed by the respondent Nos.2 to 4 on the ground that petitioner No.2 was not educationally qualified, there were no vacancies of Class -IV employees and minimum qualifications of the Class – III employees is graduate and the petitioner applied for only Class – III post and not Class – IV post thereof. The case of the petitioner

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was evaluated based on the overall penurious condition on different attributes i.e. current family pension, terminal benefits received, monthly income of family members, income from property, immovable property held by the dependents, number of dependents at the time of death, number of minor children at the time of death etc. The petitioners could not be selected during the round of appointment (in the year 2017) as other candidates were found relatively deserving and prayed for dismissal of the petition.

7. Learned Counsel Shri Shukla for the petitioners vehemently submitted that present petitioners are entitled for compassionate appointment, in view of the policy framed by the Government as well as in view of the policy framed by the respondents. Petitioner No.2 has claimed Class – IV post which is also not considered by the respondents. He further submitted that though Central Administrative Tribunal directed the respondents to consider the claim of the petitioners but without assigning any reason the claim of the petitioners is rejected. The action of the respondents is arbitrary, illegal and therefore, direction is required to be given to the respondents to consider the claim of the present petitioners.

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8. The petitioner has challenged the communication by which the prayer of the present petitioners for grant of compassionate appointment is not considered. The question involved in the present application is whether the application for compassionate appointment would be considered after delay of several years. The object of the compassionate employment by an employer being intended 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. Admittedly, 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 issued for regulating recruitment. Appointment on compassionate ground, which is offered is on humanitarian grounds, is an exception to the above rule of equality in the matter of public employment. Nobody can claim compassionate appointment by way of inheritance. Compassionate appointment is a concession and not a right. None can claim compassionate appointment, on the occurrence of death/medical incapacitation of the concerned employee, as if it were a vested right, and any appointment without considering the financial condition of the family of the deceased is legally impermissible.

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9. It is also well settled that any appointment on compassionate ground has to be made in terms of the scheme and not otherwise.

10. In the light of above said well settled legal position, if the facts of the present case are considered, it reveals that death of the deceased is caused in the year 2001 i.e. on 03.12.2001. Initially, the petitioner No.1 filed an application for seeking compassionate appointment. Said fact is not disclosed by the petitioners in the present petition. From the application filed by the petitioner No.2 on 19.01.2015, it reveals that initially petitioner No.1 has filed an application for compassionate appointment and in the year 2013, the name of the petitioner No.2 was included in the waiting list. Learned Counsel for the petitioners submitted that present petitioners have claimed the appointment in Class-IV post wherein the qualification of graduation is not required. However, the application dated 19.01.2015 nowhere states that he claim the appointment in Class-IV post. The notice issued to the respondents state that deceased has claimed the compassionate appointment in place of his father either in a Class-III or Class-IV post. The impugned order dated 22.06.2017 shows that the name of the present petitioner was included in a waiting list for Class-III and Class-IV post. The benchmark was fixed for the appointment on

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compassionate ground. Total 686 applications were pending out of which 121 candidates were recommended and benchmark of 75 marks was fixed. The applications were scrutinized by the Evaluation Committee on the basis of inputs provided by the District Offices and documents submitted by the claimants on nine different parameters such as income of the deceased employees family, number of dependents and minor children at the time of death, family pension etc. for making an objective assessment about the penurious condition of the applicants/claimants. Points obtained by individual claimants on 100 points scale have been taken for deciding the penurious conditions of the claimants. On the basis of the evaluation the Zonal Committee checked the integrated list of all the claimants and arranged the list in descending order based on the points obtained by the claimants as the highest point implies the most penurious family/claimants.

11. The scheme of the compassionate appointment framed by the respondents is also placed on record. As per the scheme, the objective of the scheme is to grant appointment on compassionate grounds to a dependent family member of a government servant who has died while in service or who is retired on medical grounds before attaining the age of 55 years (57 years for erstwhile group 'D' employees), thereby leaving the family in penury and without any means

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of sustainable livelihood so as to provide relief to the family of the government servant concerned from financial destitution and to help it get over the emergency. The upper age limit of 45 is fixed and lower age limit is 18 years. The definition of family includes spouse; or son (including adopted son); or daughter (including adopted daughter); or brother or sister in the case of unmarried government servant. A married daughter is entitled if she was only dependent on the government servant at the time of his/her death in harness or retirement on medical ground. He must support other dependent members of the family. The scheme further states that compassionate appointment can be made only upto 5% of vacancies falling for direct recruitment quota in Group 'C' posts (including erstwhile Group 'D' post) in a 'recruitment year'. The manner of determination of vacancies has been explained in the consolidated instructions on compassionate appointment dated 16.01.2023. The scheme further states that compassionate appointment can be made only if a regular vacancy is available for that purpose. No appointment can be made against a future vacancy. The recommendation of the Committee should be limited to existing vacancies only. No recommendation for appointment on compassionate ground can be made against a future vacancy. The consideration for the compassionate appointment is that the family is indigent and deserves immediate assistance for relief from financial destitution; and applicant

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for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant recruitment Rules. The onus for examining the penurious condition as per Clause 32 of the dependent family rest with authority making compassionate appointment. Thus, the basic criteria for compassionate appointment is of that to provide the appointment to the persons as financial assistance or immediate succor to the family. Considering the intent of the policy for providing compassionate appointment, any delay would clearly defeat the policy.

12. In the present matter, the father of the petitioner No.2 died on 03.12.2001. The name of the petitioner No.2 was included in the waiting list in the year 2013, prior to that, the name of the petitioner No.1 was included in the waiting list. It is also not disputed that the retirement benefits are received by the petitioner No.1 who had initially applied for the compassionate appointment. Since as per the policy, the compassionate appointment is to be against the vacancy available and benchmark was fixed for appointment of the said compassionate ground, to attain the said benchmark the Committee has considered the parameters such as income of the deceased employee's family, number of dependents and minor children at the time of death, family pension etc. for making an objective assessment about the penurious condition of the

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applicants and claimants. Points obtained by individual claimants on 100 points scale have been taken into consideration for deciding the penurious condition of the claimants. The present petitioner No.2 could not attain the said benchmark and therefore, he was not considered for the said appointment. The petitioner No.2 is also not qualified as he is under graduate and in the evaluation process, he obtained 74 marks out of 100, when benchmark of 75 was fixed. As such the condition of petitioner No.2 has not been found to be penurious resultant to which compared to the selected claimants, he was not considered. The reasoned order was passed by the respondents while rejecting the claim of the present petitioners.

13. 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.”

14. The similar position is reiterated in **The State of West Bengal Vs. Debabrata Tiwari and others Etc. Etc.** reported in 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

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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.”

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

16. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand and considering the observations made here in above and the object and purpose for which the appointment on compassionate ground is provided, the petitioner No.2 is not entitled to the appointment on compassionate ground on the death of his father who died in the year 2001 after a period of almost 20 years from the death of the deceased employee. If such an appointment is permitted, after a period of 20 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided. In the present case, the respondents have considered more

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deserving cases and granted the appointment by passing reasoned order. From the impugned order, it nowhere reveals that said order is illegal and arbitrary.

17. In the circumstances, the writ petition filed by the petitioners deserves to be dismissed, accordingly, we proceed to pass following order.

18. The Writ Petition is dismissed. No order as to costs. Rule is discharged.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G. GHAROTE, J.)