



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

WRIT PETITION NO.7133 OF 2022

(Ku. Aishwarya d/o Vishnu Raut Vs. The State of Maharashtra and ors.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Anand Parchure, Advocate for the petitioner.
Mrs. K.S. Joshi, Addl. G.P for respondent Nos.1 and 2/State.
Mr. J.B. Kasat, Advocate for respondent Nos.3 and 4

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

DATED : SEPTEMBER 27, 2023

Heard Mr. Parchure, learned Counsel for the petitioner, Mrs. K.S. Joshi, learned Assistant Government Pleader for respondent Nos.1 and 2 and Mr. Kasat, learned Counsel for respondent Nos. 3 and 4.

2. The petition questions the refusal of respondent Nos.3 and 4 to appoint the petitioner on compassionate basis, which is reflected from the communication dated 01/08/2022 Annexure-XI (page 71). The basic reason for denial of the compassionate appointment is that there is no suitable vacant post available.

3. Mr. Parchure, learned Counsel for the petitioner submits that there was a post of Junior Clerk available, and therefore, the petitioner is entitled to be appointed to that post on compassionate ground.

4. The contention is opposed by Mr. Kasat, learned Counsel for respondent Nos.3 and 4 contending

that the post of Junior Clerk, is not vacant and is already occupied by another person since more than 4 years, before the demise of the father of the petitioner, which happened on 27/11/2021, and therefore, the contention is misconceived. He further contends that there is no entitlement with the petitioner to claim appointment as a matter of right, and considering the nature of the benefits and pension being received, there is no question of any crisis being faced by the family.

5. As indicated in *Nilima Raju Khapekar Vs. Executive Director, Bank of Baroda and others, 2022(3) Mh.L.J. 441*, the purpose of compassionate appointment is to enable the family of the deceased employee to tide over the crisis occasioned on account of the sudden demise of the bread earner of the family.

6. In the instant case, it is an admitted position that the mother of the petitioner is receiving a family pension of Rs.40,600/- per month, apart from the benefits on account of gratuity, leave encashment, etc. that are also receivable by her. It is a settled position of law that compassionate appointment is not a matter of right for the legal heirs of the deceased employee, nor is it an instrument to obtain public employment by a backdoor entry by sidelining the selection on merits.

7. In that view of the matter, considering the pension amount which is being received by the mother of the petitioner and the other emoluments which she is liable to receive, it cannot be said that there is a need for

the appointment of the petitioner on a compassionate basis. The policy of 21/09/2017 in Clause-5(aa)(e) also indicates that before considering such a claim, the financial condition of the members of the family of the deceased employee has to be ascertained, and in case it is found that they are financially capable of fending for themselves, the claim for compassionate appointment ought not to be entertained. It has also come on record in view of what has been stated in paragraph No.6 of the reply of respondent Nos.3 and 4 that the deceased employee has left behind him immovable property bearing No.6551/26 within the limits of Nagar Parishad, Arni and so also open plot at Arvind Nagar in the same area, apart from which he has a share in the agricultural land at village Krushnapur, Tq. and District Yavatmal, which position has not been denied by the petitioner. Considering this, it would be apparent that the financial position of the petitioner is not of such a nature that it would indicate satisfaction of the requirement of Clause-5(aa)(e) of the Government Resolution dated 21/09/2017. Considering which we are not inclined to accept the plea raised.

8. The petition is dismissed. No costs.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G. GHAROTE, J.)