

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

WRIT PETITION NO. 7768 of 2017

Sushant s/o Dilip Bhure

vs.

Principal District and Sessions Judge, Bhandara and anr.

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

Court's or Judge's Order

Shri Atul Mahajan, Advocate for petitioner.
Shri Amit Madiwale, Assistant Government Pleader and
Shri Amit Kukday, Advocate for respondents.

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

DATE :- 21st JUNE, 2023

Heard.

2. The challenge raised in this writ petition is to the communication dated 03.04.2019 by which the petitioner's request for grant of compassionate appointment came to be rejected.

3. The facts in brief are that the petitioner's father was serving on the establishment of the respondent no.1 on the post of 'Junior Clerk'. On account of medical reasons based on the report of the Medical Officer dated 29.08.2012, it was found that the petitioner's father was not medically fit to discharge duties. He was accordingly compulsorily retired on 05.09.2012. The petitioner's father thereafter expired on 20.06.2013. Prior thereto, on 08.10.2012 the petitioner moved an application seeking grant of appointment on compassionate basis. By the impugned communication the petitioner has been informed that in view of the Bombay High Court Revised Guidelines for Appointment on Compassionate Ground, 2007 (for short, the Revised Guidelines), he was not entitled to be considered for compassionate appointment.

4. The learned counsel for the petitioner by relying upon the decisions in *Kunal Singh vs. Union of India and another [(2003) 4 SCC 524]* and *V. Sivamurthy vs. State of Andhra Pradesh and others*

[(2008) 13 SCC 730] submits that the benefit of compassionate appointment ought to have been made available to the petitioner since his father had been compulsorily retired from service on account of medical invalidation. Grant of such appointment for medical invalidation was not violative of Article 16 of the Constitution of India and hence the Revised Guidelines ought to be read in a manner to include retirement on account of medical invalidation. It is thus submitted that the impugned communication was liable to be set aside and the petitioner be held entitled to compassionate appointment.

5. The learned counsel for the respondent no.1 has relied on the affidavit filed by the Registrar (Legal and Research), High Court, Appellate Side, Bombay. Reference therein has been made to the Revised Guidelines and it is submitted that the scheme is applicable only when any employee of the Judicial Department dies while in service. In other words, the scheme is applicable in case of death in harness. Since the petitioner's father was compulsorily retired on 05.09.2012 and he expired subsequently, the petitioner would not qualify under the said Revised Guidelines.

6. Having heard the learned counsel for the parties we find that in view of Clauses 1 and 3 of the Revised Guidelines, which read as under, the petitioner cannot successfully challenge the impugned communication dated 03.04.2019.

(1) This is a revised scheme for providing appointment on compassionate ground to a dependent family member of a Judicial Employee of any rank dying in harness.

(2)

(3) The scheme shall apply to a dependent family member of an Employee of Judicial Department who dies while in service (including death by suicide).

[Emphasis supplied]

7. Undisputedly, the petitioner's father was compulsorily retired on 05.09.2012. He did not die in harness. Under Clause 3, the said scheme is not made applicable to the case of medical invalidation. Since the petitioner's father did not die while in service, we do not find any fault in issuing the impugned communication dated 03.04.2019.

8. Insofar as the decisions relied upon by the learned counsel for the petitioner are concerned, there is no dispute with the proposition that the benefit of compassionate appointment to those retiring on the ground of medical invalidation would not be violative of Article 16 of the Constitution. However, in absence of such provision in the Revised Guidelines, it would not be permissible to hold the petitioner entitled. Clauses 1 and 3 of the Revised Guidelines are not under challenge.

9. Hence for aforesaid reasons, no relief can be granted to the petitioner. The writ petition stands dismissed. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar.