

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

WRIT PETITION NO.7887 OF 2017

Yogesh S/o Kishore Dandekar,
Aged about 18 years,
R/o Datta Ward, Arvi,
Tah. Arvi, Dist. Wardha

-vs-

Zilla Parishad, Wardha,
Thr. its Chief Executive Officer,
Wardha

Shri N. R. Saboo, Advocate for petitioner.
Shri N. M. Kolhe, Advocate for respondent.

CORAM : A. S. CHANDURKAR AND M. W. CHANDWANI JJ.

DATE : March 30, 2023

Oral Judgment (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

The application made by the petitioner for grant of compassionate appointment on 02/02/2017 has been rejected by the Zilla Parishad on the ground that the petitioner is the son from the second marriage of his father and as that marriage is not valid under the Hindu Marriage Act, 1955 (for short, the Act of 1955), the claim of the petitioner cannot be considered.

2. The learned counsel for the petitioner has invited our attention to the judgment of the Honourable Supreme Court in *Union of India vs.*

V. R. Tripathi 2018 SCC OnLine SC 3097 wherein it has been held that in view of Section 16 (1) of the Act of 1955, a child born from a marriage which is null and void under Section 11 is a legitimate child. The claim for grant of compassionate appointment by such legitimate child cannot be rejected on the ground that he/she is an offspring from a void marriage. This decision has been subsequently followed in *Girija Suresh Borade and ors. vs. Union of India and ors. 2019(5) Mh.L.J. 222*. It is thus submitted that the rejection of the petitioner's application on 06/12/2019 is contrary to law.

3. The learned counsel for the respondent by referring to the affidavit in reply submits that an earlier application filed by the first wife was rejected by the Zilla Parishad after which the subsequent application dated 02/02/2017 was moved by the petitioner. Since the death of the father had occurred on 23/03/2003 there was no case for grant of compassionate appointment.

4. On hearing the learned counsel for the parties, we find that the only reason for rejecting the petitioner's application is that he is an offspring from a void marriage. In view of the decision of the Honourable Supreme Court in *V. R. Tripathi* (supra), this conclusion is incorrect. The petitioner is a legitimate child and therefore the application made by him is required to be considered on its own merits.

The same was not liable to be rejected for the reasons mentioned in the impugned communication.

5. For aforesaid reasons, the following order is passed :

- (i) The communication dated 06/12/2019 issued by the Zilla Parishad is set aside.
- (ii) The Zilla Parishad is directed to re-consider the petitioner's application dated 02/02/2017 on its own merits after considering all relevant aspects. A decision thereon be taken within a period of eight weeks from the receipt of copy of this judgment.
- (iii) All points on merits are kept open.

The Writ Petition is partly allowed. Rule accordingly.

No order as to costs.

(M. W. Chandwani, J.)

(A. S. Chandurkar, J.)

Asmita