



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7723 OF 2024

Pravin s/o Madhukar Ingle
Age: 29 years, Occu: Nil
R/o: Nagad, Tq. Kannad,
District Aurangabad.

... PETITIONER

V/s.

1. The State of Maharashtra
Through its Secretary,
Forest Department,
Mantralaya Mumbai - 32

2. The Divisional Manager,
Forest Development Corporation
Maharashtra, Kamathi Road, Nagpur.

... RESPONDENTS

...
Mr. Kalyan Patil h/f. S.R. Barlinge, Advocate for the Petitioner
Mr. A.B. Girase, GP for the Respondent-State
...

CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.

DATE : 31st July, 2024

ORAL JUDGMENT (Per: Ravindra V. Ghuge, J.):-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. The Petitioner is a 29 year old son of a deceased employee, who has put-forth prayer clause-A as under:

“A. By a writ of mandamus, or any other appropriate writ, or order or directions in the like nature respondent No. 2 be directed to consider the claim of petitioner for appointment on compassionate ground.”

3. The Petitioner has placed a strong reliance on the judgment delivered by this Court at the Nagpur Bench in **Dnyaneshwar Umaji Bele V/s. Chief General Manager (HR) MSEDCL, Mumbai and Ors.; 2024 (2) Mh.L.J. 556**, to support his contention that in **Dnyaneshwar Umaji Bele** (supra), this Court has granted compassionate appointment after 13 years of the expiry of the bread earner.

4. In view of the above, we need to record the facts of this case, as the Petitioner has placed reliance on **Dnyaneshwar Umaji Bele** (supra), as follows:

- a) The Petitioner's father Madhukar Bhikalal Ingle, was working as a Forest Guard and he died in an accident, on 16.07.1994.
- b) The Petitioner was born on 11.08.1994.
- c) The Petitioner's mother (the widow of the deceased), was 23 years of age when her husband passed away.
- d) The Petitioner has an elder sister, who was two and half years of age, when the father passed away and the Petitioner was three months old.
- e) The widow applied for compassionate appointment.

f) By communication dated 28.08.2014, the widow was called upon to submit her photograph and other documents for verification. By that time, she had turned 43 years of age.

g) On 14.09.2014, the widow was issued with an appointment order thereby posting her as a Chowkidar in the office of the Divisional Manager, Forest Project Department, Bhandara. The appointment order was served upon the widow. The widow refused to accept the appointment order and did not join duties.

h) By communication dated 09.01.2015, she was informed that if she did not join duty, it would be presumed that she is not interested and her claim for compassionate appointment would be extinguished.

i) 5 months after the issuance of the appointment order, a report of a Radiologist dated 11.02.2015, indicated that the widow had a large well defined soft tissue mass in the left breast. On further investigations, a medical report dated 27.03.2015, was issued by an Oncologist working with the Seth Nandlal Dhoot Hospital, Dr. Viraj Borgaonkar, who is associated with the Tata Memorial Hospital, Mumbai. She was diagnosed with Breast Cancer.

j) The widow further refused to accept the appointment order which was issued to her, more than six months prior to her medical examination and the medical report.

5. In **Dnyaneshwar Umaji Bele** (supra), the facts are as under:

a) The father of the Petitioner namely Umaji, expired on 13.09.1987.

- b) The Petitioner Dnyaneshwar, attained majority on 20.01.2001.
- c) He approached the prospective employer with a letter dated 13.10.2010, seeking compassionate appointment.
- d) The Petitioner Dnyaneshwar was offered temporary work intermittently and he began working with the prospective employer.
- e) This Court concluded in the judgment in **Dnyaneshwar Umaji Bele** (supra), that after the Petitioner Dnyaneshwar made an application on 13.10.2010, he was given intermittent employment by the Respondent and he was intermittently working. The Respondents made him understand that his claim is being considered favorably.

It is in the above facts and circumstances that this Court directed issuance of an appointment order to Dnyaneshwar.

6. Per contra, in the instant case, the widow applied within the time limit for seeking compassionate appointment. Her application was favorably considered and she was issued with the appointment order, dated 04.09.2014. She did not accept the appointment order. By communication dated 09.01.2015, she was informed that if she did not join duty, it would be presumed that she is not interested and her claim for compassionate appointment would be extinguished. The Petitioner has placed on record the report of the Department of Radiology issued by the Seth Nandlal Dhoot

Hospital by which further investigations were ordered. This Petition has been filed on 09.05.2024, which is after 30 years of the demise of the bread earner. The Petitioner's elder sister has got married. The Petitioner's mother is presently residing with him.

7. In these circumstances, it cannot be said that the claim of the widow was kept pending. It was never rejected on the spurious plea that she has become age barred. In fact, her application was favourably considered and she was issued with an appointment order, which she voluntarily refused to accept and refused to join duties. Five months thereafter, she was diagnosed with Breast Cancer. It is in these peculiar circumstances that we cannot hold that the prospective employer is guilty of deliberately delaying the claim of the widow or dislodging her claim on the ground that she has become age barred. This is a case wherein the widow herself refused to accept the appointment order, in anticipation that her son could be accommodated. The Petitioner herein, had already become an adult on 11.08.2012. The widow is cured of the ailment and is presently residing with the Petitioner, is the statement made.

8. In such circumstances, considering the law laid down in **State of Himachal Pradesh and Anr. V/s. Shashi Kumar; (2019) 3 SCC 653**, that we do not deem it appropriate to issue a Writ of Mandamus to the Forest

Development Corporation to issue an appointment order to the Petitioner in the peculiar facts of the case.

9. In **The State of West Bengal vs Debabrata Tiwari & Ors.; AIR 2023 SUPREME COURT 1467**, the Hon'ble Supreme Court concluded that compassionate appointment is not a vested right and the same is relative to the financial condition and the hardship faced by the dependents, consequent to the death of the bread earner. A stale claim for compassionate appointment would frustrate the very object of the scheme for compassionate appointment. It is, however, directed that the Government officials would act with a sense of utmost proactiveness and immediacy while deciding the claims of compassionate appointment so as to ensure that the wholesome object of such a scheme is fulfilled. The law laid down in **State of Himachal Pradesh and Anr. V/s. Shashi Kumar** (supra), was also discussed in **Debabrata Tiwari** (supra).

10. The learned GP relies on **Swati Ankush Borde & Anr. V/s. State of Maharashtra & Ors.; 2022 (4) Mh.L.J. 379**. This Court refused substitution for the reason that after the death of the husband/bread earner, the widow applied for compassionate appointment. She was found eligible and was granted an appointment. She accepted the appointment order and joined service. After this Court delivered an order in **Dnyaneshwar S/o. Ramkishan Musane V/s. State of Maharashtra & Ors.; 2020(5) Mh.L.J. 381**, quashing Clause 1 (c),

which prohibited substitution under the G.R. dated 20.05.2015, the Petitioner had approached this Court and requested to accept her resignation and then appoint her son in her place. It is in these circumstances, that this Court declined substitution.

11. In view of the above, we are unable to issue a Writ of Mandamus in the peculiar facts of this case, and that too after 30 years and when the widow was issued with an appointment order. **This Petition is, therefore, disposed off.** Rule is discharged.

[Y.G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]