



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3256 OF 2023

DEEPIKA DEEPAKRAO CHAVAN

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. H.P. Jadhav
AGP for Respondent/s – State : Mr. V.M. Kagne

...

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 23 OCTOBER 2024

PER COURT [*Shailesh P. Brahme, J.*]:

Heard learned counsel for the petitioner and learned AGP for the respondents.

2. The petitioner is challenging judgment and order dated 19.07.2018 passed by learned Member, Maharashtra Administrative Tribunal at Aurangabad, rejecting his O.A. No. 917/2017, preferred against the decision of respondent no. 1 / Authority, refusing to appoint him on compassionate ground.

3. Petitioner's father was working as an Industrial Inspector class – III, with respondent no. 1, who died on 21.02.2006, untimely, while in service. Petitioner's mother submitted application claiming appointment on compassionate ground but it was not allowed since she was overage. On 18.05.2007, the petitioner submitted application for the self same relief. It was not considered being time barred. She, still persisted with the request and ultimately, by letter dated 13.11.2017, the

claim was rejected. Being aggrieved, petitioner approached the Tribunal.

4. Petitioner's application was contested by the respondents before the Tribunal by filing affidavit-in-reply. Her mother who had initially claimed appointment on compassionate ground was found to be age barred. It was further contended that it was not possible to replace her name. The petitioner's claim was rightly rejected being barred by time stipulated in Government Resolution dated 22.08.2005. It was further contended that petitioner herself was major when she submitted application.

5. Petitioner was non suited by the Tribunal on the ground that earlier her mother was found to be age barred being of 43 years at the time of application. The petitioner filed application on 18.05.2007, which was beyond one year. It has also been recorded that earlier rejections were not challenged by the petitioner. The Tribunal refused to confer benefit of Government Resolution dated 20.05.2015 as she had already attained age of majority at the time of death of her father.

6. Learned counsel for the petitioner submits that impugned judgment is perverse and against the policy of appointments on compassionate ground. The respondents failed to follow Government Resolution dated 20.05.2015. It is vehemently contended that in view of larger bench decision in the matter of *Kalpana Wd/o. Vilas Taram and Another Versus State of Maharashtra* and connected matters, in Writ Petition No. 3701/2022, it was permissible to substitute the applicant. It is further contended that impugned judgment is causing great

hardship to the petitioner and her family members. Learned counsel for the petitioner adverted our attention to paragraph no. 8 of the memo of the petition to explain the laches in filing the petition.

7. Learned AGP supports impugned judgment and order.

8. We have considered rival submissions of the parties.

9. At the outset, it is necessary to mention that impugned judgment and order was passed on 19.07.2018 and it is challenged by filing present petition on 23.08.2022. There are laches in approaching the High Court. The petition was even once dismissed for default which was later on restored. We have considered the explanation given in paragraph no. 8 of the memo of the petition for condoning the laches. For want of better particulars, the pleadings being vague, we are not inclined to accept the justification. The petitioner, if has been in penury has to be vigilant.

9. It cannot be ignored that petitioner's father died on 21.02.2006 and eighteen years have passed so far. When the application was decided by Tribunal, the larger bench decision in the matter of Kalpana Vilas Taram (supra) was rendered on 28.05.2024, the petitioner did not file petition in time. She is fence-sitter. After filing the petition, it was not prosecuted diligently. On this backdrop, we are not impressed by her conduct.

10. We do not find any perversity or illegality in the impugned judgment and order. Petitioner did not apply soon after her father died. She cannot claim benefit of Government

Resolution dated 20.05.2015 as that policy was not in force when her father died. Her claim can be said to be regulated by Government Resolution dated 22.08.2005 which was in vogue at the relevant time. The petitioner relied on the matter of *Dyaneshwar Ramkishan Musane Versus The State of Maharashtra and Others*, in Writ Petition No. 6267/2018. In that matter, the restrictions imposed by G.R. dated 20.05.2015 were held to be unjustified and directed to be deleted. However, it would be appropriate to consider various parameters which are culled down by the larger bench in the matter of *Kalpana Wd/o. Vilas Taram* (supra). The following is the relevant abstract :

“12. Furthermore, from the above-referred authorities, the following principles emerge as regards the rationale behind a policy for compassionate appointment.

- a) The whole object of granting compassionate employment is to enable the family to tide over the sudden crises.
- b) Compassionate appointment is ordinarily offered in two contingencies viz. to meet the sudden crises occurring in a family either on account of death or medical invalidation of the breadwinner while in service.
- c) No one can claim compassionate appointment by way of inheritance.
- d) The mere death of an employee in harness does not entitle his family to such a source of livelihood. The Government or the Public Authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied that, but for the provision of employment, the family will not be able to meet the crises, that a job is to be offered to the eligible member of the family.
- e) Compassionate appointment cannot be made in the absence of the Rules or instructions.
- f) A dependent must fulfill the eligibility criteria laid down in the Rules for appointment.
- g) The idea of compassionate appointment is not to provide for endless compassion.
- h) Compassionate appointment is a concession and not a vested right.
- i) An application for the compassionate appointment has to be made immediately upon death/incapacitation and in any case

within a reasonable period thereof or else a presumption could be drawn that the family of a deceased/incapacitated employee is not in immediate need of financial assistance.

j) An employer cannot be compelled to make an appointment on compassionate ground contrary to its policy.

k) An appointment on compassionate ground made many years after the death/ incapacitation of an employee would be directly in conflict with Articles 14 and 16 of the Constitution of India.”

11. We are of the considered view that the parameters laid down in above referred clause g, i and k, disentitle the petitioner of compassionate appointment. We find no merit in the petition. The Writ Petition is dismissed.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]