



Judgment

wp7335.19

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

WRIT PETITION No. 7335/2019.

1.Shabana Khan wd/o Abdul Naseem
Khan, Age 50 years, Occupation
– Housewife,

2.Danish s/o Abdul Naseem Khan,
Aged about 23 years, Occupation
- Student,

Both residents of Plot No.201,
Baba Bagdadiya Colony,
Godhani Road, Zingabai Takli,
Nagpur 440030.

... PETITIONERS.

VERSUS

1.Maharashtra State Road Transport
Corporation, through its
Vice Chairman and Managing
Director, Wahatuk Bhawan,
Dr.Anand Nayar Marg,
Bhaikhala Mumbai Central,
Mumbai.

2.Maharashtra State Road Transport
Corporation, through its

Rgd.

Divisional Controller, Station Road,
Nagpur.

... RESPONDENTS.

Mr. C.V. Jagdale, Advocate for Petitioners.
Mr. S.V. Deshmukh, Advocate for Respondents.

CORAM : VINAY JOSHI AND
M.S. JAWALKAR, JJ.

DATE : JULY 15, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Rule. Rule is made returnable forthwith and by consent of the learned Counsel appearing for the parties, Writ Petition is taken up for final disposal.

2. Husband of petitioner no.1 namely Abdul Naseem Khan [father of petitioner no.2], was the employee of respondents - Maharashtra State Road Transport Corporation, as a driver. He was declared medically unfit from 28.09.2014, vide communication dated 27.01.2015. The said employee expired on 26.12.2015. During life

Rgd.

time the employee Abdul Naseem Khan had applied to respondents that his son – petitioner no.2, be appointed on compassionate ground as he has been declared to be medically unfit. Petitioner no.2, i.e. son of the deceased employee also applied for compassionate employment on 25.05.2017, which was rejected by respondents on 05.06.2017.

3. It is the grievance of petitioners that as per the policy dated 02.01.2021 framed by respondents, if an employee is declared medically unfit, then one of the family member can be appointed on compassionate ground. Secondly, petitioners have assailed the impugned termination of the deceased employee on the ground that it is purely in violation of Section 47 of the Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995 (1995 Act). The said provision reads as under :

“47.Non-discrimination in Government employment –
(1) No establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was

holding, could be shifted to some other post with the same pay scale and service benefits;

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

4. It is the contention of petitioners that due to paralysis the deceased employee was not fit for doing the job of driver, but, in terms of Section 47 of the 1995 Act, he could have been adjusted to any other suitable post, however, no efforts were made to in that regard. Petitioners would contend that since there is breach of provisions of Section 47, the deceased employee shall be deemed to be in service till the date of superannuation i.e. till 30.06.2015, and all consequential benefits shall be disbursed to them.

5. Respondents have resisted the petition by disputing both the claims. So far as the issue of grant of compassionate employment is concerned, respondents would submit that in terms of the policy, compassionate employment would be given only in case of death. Respondents have produced on record the then prevailing policy dated 28.07.2006, wherein a decision was taken that compassionate appointment will be available only in case of death. Moreover, it is submitted that though the employee died on 23.12.2015, for next two years petitioners have not applied for compassionate employment, meaning thereby there was no pressing need in the family. In this regard our attention is invited to the decision of Supreme Court in cases of (1) **State of J & K and others .vrs. Sajad Ahmed Mir – [2006] 5 SCC 766** and (2) **Umesh Kumar Nagpal .vrs. State of Haryana and others – [1994] 4 SCC 138**, wherein it has been expressed that grant of compassionate employment is not a right, but, an arrangement made only to enable the family to get over sudden financial crises.

6. Be that as it may, the policy which was prevailing in the year 2006 would apply to the cases which does not make any

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provision to grant compassionate employment on the employee declared medically unfit. In absence of challenge to the said policy, the claim of petitioners for grant of compassionate employment cannot be entertained.

7. So far as the second aspect about entitlement to retiral benefits is concerned, according to us there is total disregard to the legal provisions on the part of respondents. Section 47 of the 1995 Act cast an obligation on the employer that if the employee, after acquiring disability, is not suitable for the post which he holds, he can be shifted to some other post with same pay scale and service benefits. If such post is not available, then he may be kept in supernumerary post until the said post becomes available. In this case suitability of the employee has not been tested, nor any steps were taken to adjust him on any other post or supernumerary post. The contention of respondents that the employee during life time has waived said right by accepting the termination. In this regard, respondents have relied on the communication dated 10.10.2014, by which the employee urged to either appoint his son on compassionate ground or disburse Rgd.

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all the retiral benefits namely provident fund, gratuity etc. By any means, the said urge of the employee cannot be treated as he has accepted and waived his right, which he is otherwise legally entitled for.

8. Since there is patent breach of statutory provisions of Section 47 of the 1995 Act, it necessitates us to notionally hold that the deceased employee was in service till his date of superannuation i.e. 30.06.2015, and thus, the employer is bound to disburse entire retiral benefits by treating the said date as the date of termination/retirement. Since during lifetime the deceased was also deprived from job, respondents are also liable to pay the regular salary till the notional date of retirement.

9. In view of above, the Writ Petition is partly allowed in terms of prayer clauses (b) and (c) to the extent of modifying the date of entitlement as 30.06.2015, instead of 22.12.2015. The entire arrears shall be calculated and disbursed to petitioner no.1 – widow of deceased employee, within a period of four months from the date of

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uploading of this order.

Rule is made absolute in aforesaid terms with no order as
to costs.

JUDGE

JUDGE