



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

Writ Petition No.2991 of 2022

Dnyneshwar Umaji Bele,
Aged 36 years,
Occupation – Nil,
R/o Bibi, Post Gaul (Kh.),
Tahsil Pusad, District Yavatmal.

... **Petitioner**

Versus

- 1. Chief General Manager**
(Human Resources),
Maharashtra State Electricity
Distribution Company Limited,
Astrela Batteries Extension Building,
Ground Floor, Dharavi Road,
Matunga, Mumbai-400019.
- 2. Assistant General Manager**
(Human Resources),
Amravati Division, Amravati,
Office at Chief Engineer,
Second Floor, Vidyut Bhawan,
Shivaji Nagar, Camp,
Amravati-444603.
- 3. Chief Engineer,**
Maharashtra State Electricity Distribution
Company,
Amravati Division, Amravati.
- 4. Executive Engineer,**
Maharashtra State Electricity Distribution
Company Limited,
Karla Road, Pusad, District Yavatmal.

... **Respondents**

Shri V.N. Patre, Counsel for Petitioner.

None for Respondent Nos.1 to 3, though served.

Shri A.D. Mohgaonkar, Counsel for Respondent No.4.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : 8th JANUARY, 2024

ORAL JUDGMENT (PER NITIN W. SAMBRE, J.) :

1. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2. The prayer made in this petition is to quash and set aside the impugned communication of the respondent No.1 dated 29-5-2019 and the consequential communication of the respondent No.2 dated 11-6-2019, whereby the respondents have rejected the application of the petitioner for grant of compassionate appointment.

3. The facts necessary for deciding the present petition is as under :

(i) The petitioner was issued a validity certificate on 29-4-2017 certifying that he belongs to 'Andh', Scheduled Tribe. The father of the petitioner, Late Umaji Raghuji Bele, was in the employment of the respondents, who expired on 13-9-1987.

(ii) Based on the above, the petitioner, who has attained majority on 20-1-2001, approached the respondents vide request letter dated 13-10-2010 for grant of compassionate appointment. The said request was duly considered and

was put under process by the respondents, as is apparent from the communication dated 16-8-2011.

(iii) Subsequent thereto, the petitioner claimed to have been provided intermittent work by the respondents by making him to work for ten days in each English calendar month, as is apparent from the communication dated 20-8-2012 issued by the respondent No.4, and such order has been passed by the respondents.

(iv) The respondents kept the proposal of the petitioner pending and subsequent thereto, vide impugned communications, they have informed the petitioner that since his proposal for grant of compassionate appointment is time-barred, as the application is preferred at much belated stage – (a) that is five years after attaining the majority and (b) that the very object of providing compassionate appointment is frustrated, the said proposal vide impugned communications came to be rejected.

4. The learned counsel for the petitioner, while questioning both the impugned communications by which the claim of the petitioner for grant of compassionate appointment was rejected, would urge that the respondents have failed to appreciate the very object and purpose with which the scheme for grant of compassionate appointment is implemented by the respondents initially in Correction Slip No.28 and thereafter in 2009, when the change in the policy took place. The learned counsel would invite the attention of this Court to the judgment of the Apex Court in the case of *N.C. Santhosh Versus State of Karnataka and others*, reported in (2020) 7 SCC 617, so as to claim that the petitioner has every right to consider his claim for grant of compassionate

appointment. According to him, the proposal of the petitioner for grant of compassionate appointment was processed and during such time, he was provided temporary work by the respondents. The learned counsel by inviting our attention to the judgment of the Apex Court in the case of ***Malaya Nanda Sethy*** Versus ***State of Orissa and others***, reported in ***AIR 2022 SC 2836***, while considering the very object with which the provision of compassionate appointment is implemented, claims that the long pending application of the petitioner with the respondents and the intermittent provision of employment with the respondents disentitle the respondents to come out with a plea of the application of the petitioner being time-barred. He would draw support from the observation made in Paragraphs 7, 8 and 9 of the aforesaid judgment in the case of ***Malaya Nanda Sethy*** (supra).

5. While countering the aforesaid submissions, the learned counsel for the respondent No.4 would urge that at no point of time, the case of the petitioner was considered for grant of compassionate appointment by giving him any promise to that effect. According to him, the limitation of five years provided under Correction Slip No.28 was prescribed on 16-4-1975. His contention is that the limitation of ten years is subsequent to the date of expiry of the entitlement of the petitioner. He would urge that the father of the petitioner has expired in 1987, whereas the petitioner claimed to have attained the majority in 2001 and as such the limitation for making an application for grant of compassionate appointment was over in 2006 as per Correction Slip No.28. He would further urge that the change in the policy in 2019 is prospective and not

retrospective. That being so, the benefit cannot be extended to the petitioner. In this background, he would urge that the writ petition is liable to be rejected.

6. We have heard the rival submissions of the learned counsel appearing for the parties.

7. It is not in dispute that the father of the petitioner was in the employment of the respondent and has expired in 1987. The petitioner thereafter applied for grant of compassionate appointment vide application dated 13-10-2010 and till the date of passing of the impugned order, the petitioner was provided intermittent employment by the respondents. Same act of the respondents appears to be with an intent to provide compassionate appointment.

8. True it is, the claim of the petitioner on the date of the application, i.e. on 13-10-2010, is to be processed pursuant to the policy of the respondents, as is reflected in Correction Slip No.28 dated 16-4-1975, which provides for the limitation of five years from the date of attaining the majority. Clause 5 of Note 3 of the said Correction Slip is sought to be relied upon by the respondents so as to substantiate the claim. However, this Court is required to be sensitive to the fact that the petitioner's prayer for grant of compassionate appointment, which was moved in 2010, was for the first time rejected vide the impugned communication dated 29-5-2019, i.e. almost after a period of nine years. The petitioner in the meantime was provided intermittent appointment/work by the respondents making him understand that his claim is favourably considered.

9. In support of the above observations, reliance can be placed on the recommendations of the various authorities with whom the application of the petitioner was pending consideration and positive recommendations of such officers forwarded to the higher offices for grant of compassionate appointment. As such, it cannot be said that the petitioner's claim, since was time-barred (beyond the period of five years), was not considered at the relevant time. The fact remains that the respondents had every intention to consider the claim of the petitioner for grant of compassionate appointment and was accordingly granted for some time.

10. Even if the scheme of compassionate appointment, which underwent change in 2019, as prescribed in Correction Slip No.28, has expired, still the Court is required to be sensitive to the very object with which the provision of compassionate appointment is made and the fact that the respondents kept the proposal of the petitioner pending for nine years.

11. In the aforesaid background, the learned counsel for the petitioner, in our opinion, is justified in drawing support from the observations of the Apex Court in the case of **Malaya Nanda Sethy** (supra), particularly in Paragraphs 7, 8 and 9, which are reproduced as under :

“7. Thus, from the aforesaid, it can be seen that there was no fault and/or delay and/or negligence on the part of the appellant at all. He was fulfilling all the conditions for appointment on compassionate grounds under the 1990 Rules. For no reason, his application was kept pending and/or no order was passed on one ground or the other. Therefore, when

there was no fault and/or delay on the part of the appellant and all throughout there was a delay on the part of the department/authorities, the appellant should not be made to suffer. Not appointing the appellant under the 1990 Rules would be giving a premium to the delay and/or inaction on the part of the department/authorities. There was an absolute callousness on the part of the department/authorities. The facts are conspicuous and manifest the grave delay in entertaining the application submitted by the appellant in seeking employment which is indisputably attributable to the department/authorities.

In fact, the appellant has been deprived of seeking compassionate appointment, which he was otherwise entitled to under the 1990 Rules. The appellant has become a victim of the delay and/or inaction on the part of the department/authorities which may be deliberate or for reasons best known to the authorities concerned. Therefore, in the peculiar facts and circumstances of the case, keeping the larger question open and aside, as observed hereinabove, we are of the opinion that the appellant herein shall not be denied appointment under the 1990 Rules.”

“8. In view of the above discussion and for the reasons stated above, the impugned judgment and order passed by the High Court is hereby quashed and set aside. The respondents are directed to consider the case of the appellant for appointment on compassionate grounds under the 1990 Rules as per his original application made in July, 2010 and if he is otherwise found eligible to appoint him on the post of Junior Clerk. The aforesaid exercise shall be completed within a period of four weeks from today. However, it is observed that the appellant shall be entitled to all the benefits from the date of his appointment only. The present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.”

“9. Before parting with the present order, we are constrained to observe that considering the object and purpose of appointment on compassionate

grounds, i.e., a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications.

We are constrained to direct as above as we have found that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach the concerned High Courts seeking a writ of Mandamus for the consideration of their applications. Even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order of rejection before the High Court which leads to pendency of litigation and passage of time, leaving the family of the employee who died in harness in the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. After several years or are not considered at all as in the instant case.”

12. In the aforesaid backdrop, we are of the view that the petitioner’s claim for grant of compassionate appointment ought to have been considered and granted by the respondents, commensurate to his qualification.

13. That being so, the impugned communications dated 29-5-2019 and 11-6-2019 are hereby quashed and set aside. We direct the respondents to issue

an appointment order to the petitioner granting compassionate appointment in an appropriate category in any case within a period of eight weeks from today.

14. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)