



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

Writ Petition No.913 of 2024

[Smt. Lalita Wd/o Gulabao Bawankule and another **VERSUS** The State of Maharashtra, through its Secretary, Finance Department, Mumbai and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's order
Registrar's orders.

Shri D.B. Walthare, Counsel for Petitioners.
Shri Dhumale, Assistant Government Pleader for Respondent No.1.
Shri S.N. Bhattad, Counsel for Respondent Nos.2 to 4.

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

DATE : 18th JULY, 2024

P. C. :

1. The father of the petitioner, Gulab Mahaguji Bawankule, died a civil death on 1-9-2012, as is declared by the learned 2nd Joint Civil Judge, Senior Division, Nagpur on 11-1-2022.

2. Since the date of superannuation of deceased Gulab was 31-1-2015, the petitioner No.2 moved an application seeking compassionate appointment from 6-12-2017, which was denied on the ground that the petitioner No.2 is not entitled for compassionate appointment as his father stood superannuated on 31-1-2015 and the declaration of civil death was granted on 11-1-2022.

3. The contention of Shri Walthare, learned counsel appearing for the petitioners, is that the date of superannuation of deceased Gulab was

31-1-2015. It is further urged that in the judgment delivered by the Civil Court on 11-1-2022, the respondent-employer was a party-defendant No.2. As such the declaration is given about civil death with effect from 1-9-2012. In such an eventuality, the contention of the counsel for the petitioner is that this Court has to presume that the father of the petitioner No.2 died on 1-9-2012, i.e. three-and-half years before the date of his superannuation.

4. As against above, the contention of Shri Bhattad, learned counsel appearing for the respondent-employer, is that a suit was decided *ex parte* against the respondent-employer. It is further claimed that since the declaration is granted by the Civil Court about civil death on 11-1-2022, the employer is justified in refusing to grant compassionate appointment, as such declaration is after the date of superannuation, i.e. 31-1-2015. Drawing support from the judgment of the Supreme Court in the matter of *Ahmednagar Mahanagar Palika Versus Ahmednagar Mahanagar Palika Kamgar Union*, reported in *AIR 2022 SC 4101*, the counsel for the respondent-employer has tried to justify his above submissions. It is also claimed that the grant of compassionate appointment is not a right and such benefit can be extended only to the destitute family, who are suffering financial hardship.

5. We have appreciated the submissions.

6. It is not in dispute that the petitioner No.2, the son of deceased Gulab, is seeking compassionate appointment and the scheme of compassionate appointment is very much applicable to the employees of the respondent-Corporation.

7. The date of superannuation of deceased Gulab, the father of the petitioner No.2, was 31-1-2015 and the Civil Court in Regular Civil Suit No.1543 of 2019 granted a declaration of civil death of the father of the petitioner No.2 with effect from 1-9-2012. To the said Suit, the respondent-employer was a party-defendant No.2, who has chosen not to contest the said Suit.

8. The respondent-employer being a party to the said Suit, the declaration granted by the Civil Court is binding on the employer. As such it is the employer who is duty-bound to process the request of the mother of the petitioner No.2, i.e. petitioner No.1, for grant of family pension based on the declaration of civil death of deceased Gulab, considering the date of death as 1-9-2012.

9. It is not in dispute that the family pension is already awarded to the mother of the petitioner, i.e. the petitioner No.1.

10. In response to the Court's query, it is not disputed that the petitioner No.2 is otherwise qualified to have employment with the respondent-Corporation. It can be gathered from record that deceased Gulab was survived by four legal representatives, viz. two petitioners and a daughter and a son, who are claiming to be surviving on their family pension, post civil death of Gulab; as from above, financial hardship of the petitioners can be inferred.

11. In the aforesaid backdrop, it has to be declared that the petitioner No.2 is entitled to claim compassionate appointment considering the death of his father Gulab as on 1-9-2012 in the light of the declaration granted by the Civil Court.

12. The contention of Shri Bhattad, learned counsel for the respondent-employer, that the declaration was applied for and granted subsequent to the date of superannuation, will have positive bearing on the merits of the claim of the petitioners, as the declaration granted by the Civil Court speaks of civil death with effect from 1-9-2012. Such

declaration, the respondent-employer being party to the suit, till this date is not questioned by the employer.

13. That being so, the petition stands allowed.

We direct the respondent No.2 to forthwith issue an appointment order to the petitioner No.2 on the suitable post, as the orders impugned dated 18-8-2023 and 22-11-2022 are not sustainable in law and as such are hereby quashed and set aside.

Let the petitioner No.2 be issued an appointment order within a period of six weeks from today.

No order as to costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)