



{1}

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13385 OF 2025

Raghunath S/o.Bhagwanrao Shinde,
Age: 37 years, Occu.: Labour,
R/o. Khanapur, Tq. & Dist. Parbhani.

... Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Agriculture, Animal Husbandry,
Dairy Development & Fishery
Department, Mantralaya,
Mumbai -32.

2. The Registrar,
Marathwada Agricultural University,
Parbhani, Dist. Parbhani.

... Respondents.

.....
Mr. Subhash S. Nade, Advocate for Petitioner
Mr. S.B. Dhaware, APP for Respondents – State

.....

CORAM : SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.

DATED : 25 NOVEMBER, 2025

ORDER [Per Hiten S. Venegavkar, J.] :-

1. The petitioner has approached this Court under Article 226 and 227 of the Constitution of India, seeking direction to respondent No.2 to appoint him to a Class-IV post on compassionate grounds. The claim is founded upon the medical termination of the petitioner's father, who served as a laborer initially with respondent No.2 and subsequently was made permanent as a peon from 12.01.1984, until he was relieved from services i.e. on 03.01.2007 on account of permanent medical unfitness.

{2}

2. The factual backdrop is not in serious dispute. The petitioner's father suffered from ischemic disease, which subsequently progressed to gangrene. He remained on medical leave from 03.03.2005. On 02.01.2007, the Medical Board concluded that he was permanently unfit to continue his duties. Consequently, respondent No.2 relieved him from service with effect from 03.01.2007 under Rule 80 of the Maharashtra Civil Services (Pension) Rules, 1982. The grievance of the petitioner is twofold. First, it is urged that the petitioner's father ought not to have been relieved without being afforded an opportunity of being considered for an alternative post, as contemplated under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Act of 1995'). Secondly, the petitioner contends that as the son of a medically invalidated employee, he is entitled to a compassionate appointment under the Act of 1995 and under the Compassionate Appointment Scheme earlier in operation.

3. The petitioner had earlier approached this Court in writ petition No. 11025 of 2010, wherein a direction was issued on 30.07.2012 to the respondents to decide his representation. Pursuant thereto, the petitioner submitted a fresh representation on 19.10.2012. Respondent No.2 thereafter rejected the request by communication, *inter alia*

{3}

holding that the compassionate appointment policy then in force, particularly the Government Resolution dated 22.08.2005, did not contain any provision regarding compassionate appointment to dependents of medically terminated employees.

4. The learned advocate for the petitioner strenuously contended that the impugned rejection is contrary to Section 47 of the Act of 1995 and the law declared by the Hon'ble Supreme Court in ***Kunal Singh v. Union of India and another***, (2003) 4 SCC 524. It was argued that once the petitioner's father suffered from a disability, respondent No.2 was bound to protect his employment by placing him in an alternative post, and failure to do so would automatically entitle the petitioner to seek compassionate appointment.

5. Per contra, the learned AGP submitted that compassionate appointment is confined to dependents of employees who die in harness, unless the relevant service rules provide otherwise. It was argued that the Act of 1995 does not create any right for legal heirs of disabled employees to be appointed in the service of the State. Reliance was placed on the settled principle that compassionate appointment is not a vested right but a concession governed strictly by the applicable schemes.

{4}

6. We have heard the learned advocate for the petitioner as well as the learned AGP, and have also perused the impugned communication of respondent No.2, thereby rejecting the petitioner's representation and refusing to grant him employment in the Class-IV category in the place of his father, who was medically declared unfit and hence was terminated from services. In order to analyze the correctness and legality of the decision made by respondent No.2 while rejecting the representation of the petitioner, it is necessary to analyze the legal position pertaining to the appointments to be made on compassionate ground. It is also necessary to analyze the arguments of the learned advocate for the petitioner pertaining to the provisions of the Act of 1995.

7. Section 47 mandates that no establishment shall dispense with or reduce in rank an employee who acquires a disability during service, such an employee shall be shifted to a suitable post with the same pay and benefits. In *Kunal Singh* (supra), the Hon'ble Supreme Court emphasized the mandatory character of the provision and held that an employee could not be discharged solely due to the disability. However, it is equally well settled that Section 47 protects the employee, not his legal heirs. It creates no derivative right in favor of the dependents for public employment. The protection is personal to the employee and

{5}

meant to ensure continuity of service during disability. The petitioner's father did not challenge his medical termination, nor is the present petition an action for setting aside that termination. The claim before us is solely for compassionate appointment to the petitioner. Such a claim cannot be founded on Section 47 of the Act of 1995 as contended by the petitioner. More importantly, ***Kunal Singh*** (supra) does not lay down that where there is at least breach of Section 47, the legal heir becomes entitled for compassionate appointment. Compassionate appointment is governed exclusively by relevant schemes, Section 47 does not enlarge those schemes.

8. As far as the legal position in respect of the appointments to be made on compassionate ground is concerned, it has been held in a catena of judgments by the Hon'ble Supreme Court that compassionate appointment is a narrow exception to the general rule of public employment under Article 14 and 16. The Hon'ble Supreme Court has reiterated this principle in several decisions such as ***Umesh Kumar Nagpal v. State of Haryana and others***, (1994) 4 SCC 138, ***State Bank of India and another v. Rajkumar***, (2010) 11 SCC 661 and ***N.C. Santosh v. State of Karnataka and others***, (2020) 7 SCC 617.

9. Thus, from the aforesaid line of judgments, it can be held that an appointment on compassionate ground is not a vested right, but it is

{6}

a concession to relieve the immediate hardship of a family on the death or incapacitation of a breadwinner. Thus, it is required that it must be strictly in accordance with the governing scheme, and Courts cannot direct appointment contrary to or in absence of such schemes.

10. The compassionate appointments scheme in Maharashtra, as it stands post-2005, restricts eligibility to dependents of employees who die while in service. The Government Resolution dated 22.08.2005 earlier permitted appointment to dependents of employees who suffer cancer or who were disabled due to an accident. However, that provision was later withdrawn. The contention of the respondents, therefore, that no policy existed at the relevant time permitting compassionate appointment to dependents of medically terminated employees, holds substance.

11. As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms compassionate ground is a concession and not a right.

12. In the case of *State of Himachal Pradesh and Anr. Vs. Shashi Kumar* reported in (2019) 3 SCC 653, this Court had an occasion to consider the object and purpose of appointment on compassionate ground and considered the decision of this Court in the case of Govind Prakash Verma Vs. LIC, reported in (2005) 10 SCC 289, in paras 21 and 26, it is observed and held as under-

“21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v State of Haryana. (1994) 4 SCC 138] The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138], SCC pp. 139-40, para 2)

“2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the

{8}

qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such 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 crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased

{9}

employee in such posts has a rational nexus with the object sought to be achieved viz relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

"26. The judgment of a Bench of two Judges in Mumtaz Yunus Mulani v. State of Maharashtra [(2008) 11 SCC 384] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289: 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case."

13. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the

{10}

dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.

14. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, to appoint the petitioner now on compassionate ground shall be contrary to the object and purpose of appointment on compassionate ground.

15. Thus, from the above analysis, we are of the considered view that Section 47 of the Act of 1995, protects only the employees and it does not create any right in favor of his legal heirs to demand compassionate appointment. It is also further observed that at the relevant time, there existed no government resolution or statutory rule entitling the dependents of a medically terminated employees to be appointed on compassionate ground in service. The compassionate

{11}

appointment is an exception and must be strictly governed by the scheme. This Court cannot direct appointment outside the four corners of the policy. Thus, the impugned rejection order shows due consideration of the petitioner's case and cites the correct reason and non-availability of a policy permitting such appointments. The order does not suffer from arbitrariness or illegality.

16. In light of aforesaid findings, no mandamus can be issued compelling the respondents to appoint the petitioner. Hence, the writ petition deserves to be dismissed.

17. Accordingly, the writ petition stands dismissed. There shall be no order as to costs.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE