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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 17384 OF 2024

Rohit Devdas Mohite

... Petitioner

V/s

State of Maharashtra and Others

... Respondents

Mr. Nilesh Wable i/b Mr. Umesh Mankapure for the petitioner.

Mr. P. P. Kakade, Addl. G.P. with Mr. A.K. Naik, AGP for the respondent
nos. 1 and 2.

**CORAM : SHREE CHANDRASHEKHAR &
MANJUSHA DESHPANDE, JJ.**

DATE : 24TH JULY 2025

Per Shree Chandrashekhar, J:

Aggrieved by the order dated 9th August 2024 passed by the Education Officer (Secondary) by which the claim for compassionate appointment made by the petitioner has been rejected, this writ petition has been filed under Article 226 of the Constitution of India.

2. Briefly stated, the father of the petitioner died in harness on 28th October, 2006. The petitioner has pleaded that his mother made an application on 29th November 2006 seeking appointment on compassionate ground but that application was kept pending and not decided. The petitioner made an application for compassionate appointment on 15th June 2023 after attaining the age of 18 years on 5th April 2020. The said application has been dismissed by the impugned order dated 9th August 2024. The learned counsel for the petitioner referred to the decision of Full Bench of this Court in "*Kalpna wd/o Vilas Taram and another*", 2024(4) Mh.L.J. (F.B.) 312 to submit that the application by the petitioner was in the nature of a substitution application and was permissible in view of the decision in "*Kalpna*"

(supra). The learned counsel for the petitioner has also referred to the decision in “*Amol Hiralal Telrandhe vs. State of Maharashtra, Through its Secretary for Rural Development Department and Others*” 2024 SC OnLine Bom 2006 to criticize the impugned order dated 9th August 2024 on the ground that the petitioner’s application for compassionate appointment could not have been rejected on the ground that he was the third child of the deceased employee.

3. This is well settled that the schemes of compassionate appointment are founded on humanitarian grounds to provide immediate relief to the family of the deceased employee to tide over the sudden financial crisis. In “*Bhawani Prasad Sonkar v. Union of India & Ors.*” (2011) 4 SCC 209, the Hon’ble Supreme Court observed that the schemes for compassionate appointment are carved out by way of a policy which partakes the character of the service rules. In “*State Bank of India & Anr. vs. Somvir Singh*”, (2007) 4 SCC 778, the Hon’ble Supreme Court held that the right for consideration for appointment must be traceable under any scheme, executive instructions, rules, etc. framed by the employer and there can be no right whatsoever to claim compassionate appointment on any ground other than what has been provided by the employer. To relieve the family of the Government servant concerned from financial destitution and to help the family get over the unfortunate situation, the scheme for compassionate appointment formulated by the State of Maharashtra provides that the appointment can be made to one dependent legal heir of the deceased employee if such application was made within the prescribed period. Under the Government Resolution dated 31st December 2002, the period provided for making an application for compassionate appointment was six months and that period was enlarged in the coming years. In the year 2006, when his father died the petitioner was a toddler aged about four

years. About eighteen years thereafter, he submitted the application for compassionate appointment which has now been dismissed. Before him, the mother of the petitioner had made application for compassionate appointment but there is nothing on record to demonstrate that she was pursuing that application; atleast she never approached the Court. This needs to be remembered that any claim for compassionate appointment cannot be made by way of inheritance (refer: *State of Chattisgarh vs. Dhirjo Kumar Sengar*, 2009 Mh.L.J. Online (S.C.) 94 = (2009) 13 SCC 600). In “*Umesh Kumar Nagpal v. State of Haryana*” (1994) 4 SCC 138, the Hon’ble Supreme Court observed that the scheme for compassionate appointment is not a vested right which can be exercised at any time in future. Elucidating the object behind compassionate appointment, the Hon’ble Supreme Court further observed that the object is not to give a member of the bereaved family a post much less a post for post held by deceased employee.

4. This is by now settled that only right of a dependent of the deceased employee is that his application for compassionate appointment is considered within the framework of the scheme formulated by the employer and other applicable laws. In “*N. C. Santhosh v. State of Karnataka & Ors.*”, (2020) 7 SCC 617, the Hon’ble Supreme Court held that a dependant of the government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/ her application for compassionate appointment. In “*Union of India & Ors. vs. M.T. Latheesh*”, (2006) 7 SCC 350, the Hon’ble Supreme Court has held that compassionate appointment being an exception to the general rule, the appointment has to be made only in warranting situation, and in granting appointment the guiding factors should be financial

condition of the family.

5. In “*Amol Hiralal Telrandhe*” (supra), on which the learned counsel for the petitioner has placed heavy reliance, this Court held as under:

“23. In *Zile Singh* (supra), wherein the provision of Haryana Municipal Council Act, 1973, was in question whereby a person having more than two children on or after the expiry of one year of the commencement of the said Act is held deemed to be disqualified. Though question before the Hon'ble Apex Court challenging the retrospective effect of Haryana Municipal Council Amendment Act in Section 3 and 15, the observations made in the judgment in paragraph No.26 is relied on. The Hon'ble Apex Court held as under:

"26. However, the legislature thought that it would be more reasonable if that is qualification was not applied by reference to a child born within a period of one year from the date of commencement of the Act. The period of one year was appointed keeping in view the period of gestation which is two hundred and eighty days as incorporated in Section 112 of the Evidence Act of 1872 and added to it a little more margin of 85 days. The provision spells out this meaning but for the error in drafting. Even if there would have been no amendment (as introduced by the second amendment Act) the proviso as it originally stood, if subjected to judicial scrutiny, would have been so interpreted and the word "after" would have been read as "upto" or assigned that meaning so as to carry out the legislative intent and not to make

capital out of the draftsman's folly. Or, the proviso- if not read down- would have been declared void and struck down as being arbitrary and discriminatory inasmuch as the persons having more than two living children on the date of enactment of the Act and within one year thereafter and the persons having more than two living children after the date of one year could not have formed two classes capable of being distinguished on a well-defined criterion so as to fulfill the purpose sought to be achieved by the legislature."

"27. After going through the material made available by the parties, which is based on various journals research and after considering the various judgments and various similar provision in other statute, there is no doubt that maximum period of one-year is provided in almost all legislation and the persons having third child during that period i.e. from the date of issuing Notification, till further one year is protected. The only reason for prescribing such a period of one year is to get the knowledge of issuance of Notification to the person and to grant some appropriate leeway. The cut-off date as prescribed in the amendment provision grant exactly 9 months i.e. from issuance of Government Resolution dated 28/03/2001 till 31/12/2001. Thus the prescribed cut off date is erroneous and not based on any discernible principle. Thus purpose of granting protection itself is defeated."

6. The observations made in paragraph no. 23 of the decision of the Full Bench of this Court in "*Kalpna*" (supra) must be read together with other findings recorded by the Full Bench and the said

observations cannot be read in isolation. The appointment in “*Amol Hiralal Telrandhe*” was declined on the ground that the applicant’s father had three children which was in contravention to Government Resolution dated 21st September 2017. “*Amol Hiralal Telrande*” (supra) refers to the decisions in *Zile Singh vs. State of Haryana*, (2004) 8 SCC 1 and *Javed vs. State of Haryana*, (2003) 8 SCC 369 and pointed out the draftsman’s mistake. It is well remembered that the ratio of any decision is an authority for what it actually decides. In *Ambika Quarry Works & Anr vs. State of Gujarat & Ors*, (1987) 1 SCC 213, the Hon’ble Supreme Court has observed in paragraph 18 as under:-

“18.....The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. [See *Lord Halsbury in Quinn v. Leathem*, (1901) AC 495].....”

7. Mr. Nilesh Wable, the learned counsel for the petitioner lastly submitted that the matter may be referred to a larger Bench if this Court does not agree to the ratio in “*Kalpana*” (supra). To this, we would only indicate that this Court is alive to the principles of judicial discipline and propriety and we accord our concurrence with the decision in “*Kalpana*” (supra) which is clearly not attracted in the facts of this case. The public employments must be in consonance with the Constitutional mandate under Article 14 and Article 16 of the Constitution of India and the only exception carved out would be the cases where the widow or dependent children of the employee who died in harness are provided compassionate appointment. It is now too well settled that compassionate appointment cannot be granted so many years after the employee died in harness. The passage of time after the death becomes a reason to conclude that the family had tide

over the immediate crisis and, therefore, the appointment on compassionate ground need not be given. In “*Haryana State Electricity Board & Anr. v. Hakim Singh*” (1997) 8 SCC 85, the Hon’ble Supreme Court observed that the object of providing relief should not be taken as opening an alternative mode of recruitment to public employment. In paragraph no.8 of the reportable judgment the Hon’ble Supreme Court observed as under :-

“8. The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependents in a vacancy. The object is to give succor to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment”.

8. Writ Petition No.17384 of 2024 is dismissed.

[MANJUSHA DESHPANDE, J.]

[SHREE CHANDRASHEKHAR, J.]