

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

WRIT PETITION NO. 17105 OF 2024

Akshay Balu Asgolkar

Aged 29 years,

Residing at C/003,

Jaywanti Apartments Co – operative

...Petitioners

Housing Society Limited,

Nilegaon, Nallasopara (West),

Taluka – Vasai, District – Palghar,

Maharashtra – 401 203

Versus

1 The Registrar General,
Bombay High Court, Fort,
Mumbai – 400 001.

2 The Chief Judge,
Small Causes Court, L.T. Road,
Dhobi Talao, Mumbai – 400 002.

3 The Registrar,
Small Causes Court, L.T. Road,
Dhobi Talao, Mumbai – 400 002.

...Respondents

4 The State of Maharashtra,
Through the Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai – 400 032.

Mr. Ramesh Ramamurthy a/w. Mr. Saikumar Ramamurthy and
Ms. Seema Sorte, advocate for the Petitioner.

Mr. Girish Agrawal a/w. Ms. Chitra Darekar, advocate for the
Respondents.

**CORAM: SUMAN SHYAM &
MANJUSHA DESHPANDE, JJ.**

DATED: 20TH SEPTEMBER, 2025.

JUDGMENT [PER : MANJUSHA DESHPANDE, J.]

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1. The Petitioner assails the order dated 3rd August, 2024, passed by the Registrar, Small Causes Court, Mumbai, rejecting his claim for appointment on compassionate ground in place of his father, referring to Clause 10 of the Bombay High Court Revised Guidelines for Appointment on Compassionate, 2019 (hereinafter referred to as, “The Guidelines”, for short).

2. The father of the Petitioner Balu Babu Asgolkar, was employed in the Small Causes Court, Bandra, Mumbai as an Assistant Translator. He expired on 15th December, 2020 at the age of 56 years while in service. In view of the Guidelines framed by this Court for appointment on compassionate ground, the petitioner has preferred an application which came to be rejected vide order dated 3rd August, 2024. It is the case of the Petitioner that he made an application addressed to the Respondent No.3, dated 11th January, 2021, informing about the demise of his father and requesting for his appointment on compassionate ground. The said application was made by him within 30 days of his father’s death, which was responded by the Respondent No.3 on 18th January, 2021, informing him that, as per the Guidelines, only one eligible member from the family of deceased can be appointed in his place.

3. The Petitioner claims that his application was made within 27 days of his father’s death, though he does not possess a copy of the same, and it was acknowledged by the respondent no.3. Simultaneously, the Petitioner’s mother was pursuing her claims for terminal benefits. Despite her persistent efforts, her family pension was sanctioned only on 19th January, 2024, which is after

3 years and 1 month after her husband's death. During this period, the Family suffered severe financial hardships, on account of having lost sole bread winner of the family and also being deprived of pensionary benefits. Despite continuous persuasion, the Petitioner's application came to be rejected by the Registrar, Small Causes Court, informing him that his application for appointment on compassionate ground which was forwarded to this Court on its administrative side, has been rejected in view of Clause 10 of the Guidelines. It is on this premise the Petitioner has approached this Court in its jurisdiction under Article 226 of the Constitution of India, for redressal of his grievances.

4. The learned advocate for the Petitioner, Mr. Ramesh Ramamurthy submits that due to the death of the sole bread winner of the family on 15th December, 2020, his family was faced with precarious financial condition, more particularly in view of the arrival of Covid-19 Pandemic. His family was left in destitution without any source of income. Although the Petitioner submitted an application on 11th January, 2021 (a copy of which is not available with him), the Respondents treated his request as time barred Application.

5. It is his contention that the Petitioner submitted three applications in January 2021, June 2023 and August 2023, respectively. His consistent efforts for seeking appointment on compassionate ground ultimately failed when the impugned order came to be passed.

6. The Learned Counsel for the Petitioner relies on the contents of communication dated 21st June, 2023, addressed by the mother of the Petitioner to the Chief Judge, Small Causes Court, Mumbai, wherein she has twice referred to the application, which the Petitioner has tried to submit, but the authorities have refused to accept it. In the same communication, she has narrated the financial condition of their family and made an earnest request that the application of her son for appointment on compassionate ground may be considered.

7. The learned Advocate relying on the rejoinder filed by the Petitioner on 24th March, 2025, submits that on 15th May, 2020, the restriction on account of Covid-19 Pandemic pandemic were imposed which continued till the end of February 2022. During this period even the Hon'ble Supreme Court has passed various orders holding that the period between 15th March, 2020 till May 2022, would be excluded for purpose calculating period of limitation. In view there of, the Respondent authorities ought not to have adopted a hyper technical approach by rejecting the application of the Petitioner for appointment on compassionate ground. Some latitude deserved in his case, considering the peculiar fact situation.

8. The very purpose for appointment on compassionate ground is to ensure that the family of an employee is not left to face Destitution or Vagrancy due to the sudden death of the bread winner. The core object of compassionate appointment is to alleviate such distress, which the family of the deceased employee

faces, by offering employment to one of the eligible family members.

9. The learned advocate submits that, in fact there is no delay as such caused in making an application for appointment on compassionate ground, however, if at all this Court is of an opinion that there is some delay, such delay deserves to be condoned in view of the explanation given by the Petitioner in the interest of justice.

10. The learned counsel Mr. Girish Agarwal appearing for Respondent Nos.1 and 2 strongly opposes the prayer of the Petitioner. According to him, the petitioner in fact has not immediately filed an application for appointment on compassionate ground, as contemplated in *Clause 10 of the Guidelines*. The first proper application by him, was made only on 21st August, 2023, seeking appointment in place of his deceased father which is after the period of 2 years 8 months and 6 days. Though the Petitioner's mother had made an application dated 21st June, 2023, it was found to be defective since it was not accompanied with necessary documents. Therefore, his mother was called upon to furnish an application in accordance with the Guidelines.

11. On receiving the Petitioner's application dated 21st August, 2023, remarks were called from Chief Judge, Small Causes Court, Mumbai, on 29th April, 2024. In response to the communication dated 29th April, 2024, the Chief Judge, Small Causes Court, Mumbai has forwarded a report dated 10th May, 2024. The gist of

the report is that the learned Judge has formed an opinion that, from the documents on record the possibility that the Petitioner has acquired essential qualification of typing English and Marathi in July and August 2022 respectively in order to secure employment cannot be ruled out. More particularly, in view of acquisition of necessary qualification, later in point of time.

12. The committee of this Court headed by the Hon'ble the Chief Justice thereafter rejected the claim of the Petitioner referring to *Clause 10 of the Guidelines*, which requires the applications for appointment on compassionate ground to be made within one year from the death of an employee. It is submitted that though the Petitioner is claiming that delay has occurred due to pandemic, however, fact remains that during the very period i.e. 18.01.2021 to 21.08.2023, the petitioner was regularly pursuing the claim for pensionary benefits of his father and there was exchange of communication between the Petitioner and the Respondents. Since the Petitioner has filed a belated application, the urgency for meeting the emergent situation ceased to exist, hence, the claim of the Petitioner has been rightly rejected. The object of providing appointment on compassionate ground is primarily to provide immediate solace to the family of an employee who died in harness. Hence, it is prayed that the Writ Petition does not deserves any consideration and deserves to be dismissed.

13. We have heard the respective counsel, and perused the documents placed on record. It is undisputed that the father of the Petitioner expired on 15th December, 2020, and the claim for the retiral benefits was pending with the Respondents for a period of

three years and one month. The claim of the Petitioner for appointment on compassionate grounds has been rejected, solely on the ground of delay, relying on Clause 10 of the Guidelines, which provides that, the application for appointment on compassionate grounds shall be made within a period of one year from the death of an employee.

This Court is aware of the legal position that appointment on compassionate ground is not a vested right. In fact, it is an exception to the regular mode of recruitment. Therefore, the rules and timelines prescribed in the Scheme are required to be followed scrupulously. Immediate financial aid to the family in distress is the paramount consideration, while granting appointment on compassionate grounds. Therefore, if there is any delay, it is presumed that the family, while was in distress has overcome the situation having sustained themselves during that period by finding alternate source of sustenance. Against the aforementioned background, we have to consider whether the delay in filing the application by the Petitioner deserves consideration.

14. Both the parties have claimed different date on which the Petitioner has filed application. According to the Petitioner he submitted his application on 11th January, 2021 followed by June 2023 and August 2023, whereas the Respondents claim that his first application was filed on 21st August, 2023, which is 2 years, 8 months and 6 days after the death of his father. Admittedly, the application dated 11th January, 2021 has not been placed on record. During the course of arguments, it is submitted by the learned counsel for the Petitioner that though the Petitioner had

tried to submit the application, it was not accepted by the Respondents, although there is no proof against such claim, nevertheless a reference to similar statement can be found in the communication dated 21st June 2023, made by the mother of the petitioner, addressed to the Chief Judge, Small Causes Court, Mumbai. She has made a categorical Statement that, Petitioner's application was not accepted and he was informed that, Unless the pension proposal of the mother of the Petitioner is sanctioned his application for appointment on compassionate ground is not capable of being accepted.

15. In her communication dated 21st June 2023, the mother of the Petitioner has requested the Respondents to accept the application of the Petitioner for his appointment. This communication lends support to the stand of the Petitioner, that he had tried to submit an application which was not accepted. In addition one more communication dated 21st August, 2023, of the Petitioner addressed to the Registrar, Small Causes Court, Mumbai, giving details about movable and immovable properties registered in the name of his father, makes a reference to his earlier application. Though there is no direct proof in support of the claim of the petitioner that, he had in fact tried to make an application, but it was not accepted. However, from the communication of the mother of the petitioner dated 21st June, 2023 it can be gathered that, in fact he did make an endeavour to submit an application which has not been accepted. Which tilts the balance in his favour.

16. *Rule 10 of the Guidelines*, contemplates making an application within a period of one year of the death of the

employee, which further empowers the Hon'ble The Chief Justice to relax the said condition by condoning the delay and considering application made within two years. Rule 10 of the Bombay High Court Revised Guidelines for Appointment on Compassionate, 2019, reads thus:

“10. Limitation for making request for compassionate appointment:-

Application for appointment on compassionate ground shall be made within one year of death of the employee in harness. However, in a suitable case the Chief Justice may consider request for compassionate appointment made after 1 year upto 2 years after the death of the employee.

Provided that if the eligible dependent family member of the deceased employee includes son or daughter, the time for making application for compassionate appointment would be one year from the date, the eldest of the children of the employee attains the age of majority or, at the discretion of the family, the eldest son of the employee attaining the age of majority.”

17. Considering the conflicting claims of the Petitioner and the Respondents, about the date of making application, even assuming that the application was delayed, as claimed by the Respondents, the delay so occurred is of 2 years, 8 months and 6 days. It needs to be appreciated that the period during which the father of the Petitioner had expired, the whole world was facing Covid-19 pandemic, during which restrictions were imposed on the movement of citizens. During the two consecutive waves of Covid-

19 Pandemic, even the Hon'ble Supreme Court had granted concessions to litigants, by extending the period of limitation for a period of 90 days upto 1st March, 2022. In such situation the petitioner could not be expected to file an application, by exhibiting diligence, which could be expected only in normal circumstances.

18. It cannot be denied that there was an inordinate delay in granting the pensionary benefits to the mother of the Petitioner. The family of the Petitioner had to face grave financial hardship. It is a settled position of law that there is no vested right in the legal heirs of deceased employee to claim appointment on compassionate ground. Such provision is made by the employer in order to alleviate the immediate financial distress faced by the family on death of an employee. Hence, the immediate necessity to meet the emergent situation, is lost on account of delay in making an application. The family of a deceased employee overcomes the grave hardship, and the efficacy is lost.

19. In view of the abovementioned observations, it cannot be held that the delay in making an application by the petitioner is unexplained. On the contrary, the delay is satisfactorily explained by the Petitioner. It needs to be appreciated that the delay is not unreasonable and has been explained showing sufficient cause, therefore it deserves consideration.

20. The application of the petitioner has been rejected solely on the ground of delay and not on merits, hence in our opinion, the impugned order is required to be quashed and set aside in the

interest of justice by remanding the matter back to the Respondent to consider the case of the Petitioner on its own merits.

21. Accordingly, the impugned order is quashed and set aside. The Respondents are directed to decide the application of the Petitioner for appointment on compassionate ground afresh and on its own merits, preferably within a period of 12 weeks from the date of this order.

22. Writ Petition is disposed of in the above terms.

(MANJUSHA DESHPANDE, J.)

(SUMAN SHYAM, J.)