

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7315 OF 2025

Amol Bhagwandas Bairagi

Age : 34 Years, Occ. Nil,

R/o. House No. 237, Mumbai-Agra Road,

Village – Vilholi, Tal & Dist – Nashik

... Petitioner

Versus

1. State of Maharashtra
through Urban Development Department

2. The Deputy Commissioner,
Nashik Municipal Corporation,
Nashik, Dist. Nashik.

... Respondents

Mr. Hrishikesh Shinde, Advocate for the Petitioner.

Ms. Chaitrali Deshmukh, Advocate for Respondent No.2.

CORAM : RAVINDRA V. GHUGE AND

ASHWIN D. BHOBE, JJ.

RESERVED ON : 24th NOVEMBER, 2025
PRONOUNCED ON : 03rd DECEMBER, 2025

JUDGMENT : (Per : ASHWIN D. BHOBE, J.)

1. Rule. Rule is made returnable forthwith and the matter is heard finally, with the consent of the parties.

2. Petitioner by the present Petition filed under Article 226 of the Constitution of India assails two orders; firstly, order dated 30.01.2023 passed by the Respondent No.2 rejecting the Petitioner's Application dated 02.04.2014 for his appointment on compassionate ground and the order dated 04.12.2024 passed by Respondent No.2 rejecting the subsequent representations dated 02.09.2024, 25.09.2024, 12.11.2024 and 23.11.2024, seeking compassionate appointment.

3. Material facts in this petition are that the Petitioner's father Bhagwandas Madandas Bairagi (Bhagwandas) was working as a driver in the Motor Repairing Department of the Nashik Municipal Corporation, at Nashik since 21.07.2003. Bhagwandas suffered a heart attack and passed away on 30.05.2005. Bhagwandas left behind his wife Smt. Bharati Bhagwandas Bairagi (Bharati), two daughters (viz. Bhavana & Puja) and 2 sons (viz. Petitioner & Mayur). Petitioner's mother made an Application dated 23.06.2005 to the Respondent No. 2 for compensation and other benefits after the demise of Bhagwandas.

4. Bhagwandas had a second wife by name Sunita, from whom Bhagwandas had three children. Sunita had filed Regular Civil Suit No. 277 of 2005 before the Court of the Civil Judge, Senior

Division, Nashik seeking a declaration, that Sunita be declared as the legally married wife of Bhagwandas and that Bharati and her family members have no relation with Bhagwandas.

5. Bharati and her family members (which includes the Petitioner) filed Civil Miscellaneous Application No. 141 of 2005 before the Civil Court under Section 372 of the Indian Succession Act, 1956 for a Succession Certificate.

6. By a common Judgment dated 16.08.2007, Regular Civil Suit No.277 of 2005 was dismissed, whereas the Civil Miscellaneous Application No. 141 of 2005 filed by Bharati was allowed and consequently Succession Certificate was ordered to be issued in the name of Bharati and her family members.

7. Sunita questioned the said common Judgment passed in Regular Civil Suit No.277 of 2005, by filling Civil Appeal No. 275 of 2007, before the District Court, Nashik. Vide Judgment dated 14.08.2013, the District Court partly allowed the Civil Appeal No. 275 of 2007, by modifying the common Judgment dated 16.08.2007, thereby declaring children of Sunita to be entitled to equal rights in the property

of Bhagwandas, consequently Succession Certificate was ordered to be issued in the in name of Sunita's children alongwith Bharati and her family members.

8. Dissatisfied with the judgment dated 14.08.2013 passed in Civil Appeal No. 275 of 2007, Sunita filed Second Appeal No. 322 of 2014 before this Court. During the pendency of the said appeal Second Appeal, Sunita and Bharati vide Minutes of Order dated 12.07.2017, amicably resolved to share the amounts of gratuity and other service benefits payable to Bhagwandas in eight (8) equal shares (1/8th share) in favour of the three (3) children of Sunita and four (4) children of Bharati. Question of who being the legally wedded wife of Bhagwandas and who being entitled to the balance 1/8th share was left open to be decided in the said Second appeal on merits.

9. Vide Judgment dated 15.12.2023, Second Appeal No. 322 of 2014 was disposed by holding Bharati as the legally wedded wife of Bhagwandas, thus being entitled to the remaining 1/8th share of the amount of pension payable lying in the pension account of Bhagwandas.

10. Petitioner on 02.04.2014 had filed Application before Respondent No.2 seeking appointment on compassionate ground. Said

Application was rejected by the Respondent No.2 on 30.01.2023, holding the same being beyond the period of one year, as prescribed in the Government Resolution dated 21.09.2017.

11. Petitioner vide his representations dated 02.09.2024, 25.09.2024, 12.11.2024 and 23.11.2024, repeated his request to the Respondent No. 2 for appointment on compassionate ground.

12. By order dated 04.12.2024 Respondent No.2 rejected the said representations, by reiterating the request being beyond the period of one year.

13. Mr. Hrishikesh Shinde, learned Advocate for the Petitioner submits that the Petitioner at the time of death of Bhagwandas was a minor. He submits that in view of the dispute between his mother (Bharati) and the second wife (Sunita), Petitioner could not file an Application seeking compassionate appointment. He submits that the said dispute between Bharati and Sunita was settled on 15.12.2023 in Second Appeal No. 322 of 2014. He therefore submits that the Application dated 02.04.2014 as well as the subsequent representations filed by the Petitioner were required to be considered and the delay in

filing the Application is required to be condoned. He submits that Respondent No.2 has erroneously rejected the applications / representations filed by the Petitioner seeking compassionate appointment.

14. Ms. Chaitrali Deshmukh, learned Advocate for Respondent No.2 has opposed the Petition. She has placed on record the Government Resolution dated 21.09.2017 issued by the General Administration Department of the Government of Maharashtra. She places reliance on Clause 10 (A) of the said resolution to support the rejection orders.

15. From the rival contentions of the parties the question that falls for our consideration is whether Respondent No.2 was justified in rejecting the applications / representations filed by the Petitioner seeking appointment on compassionate basis, on the ground of the same being beyond limitation?

16. A perusal of the policy for compassionate appointment, as framed by the Respondent State, vide Government Resolution dated 21.09.2017 indicates the objective behind the grant of compassionate appointment, is to enable the family members of the deceased employee

to tide over the sudden crisis and to relieve them from financial destitution due to the untimely death of their bread winner.

17. Clause 10(A), Clause 10(B) and Clause, 10(C) of Annexure-A to the Government Resolution dated 21.09.2017 are transcribed herein below:- (१०) अर्ज करण्यासाठी मुदत:-

(अ) अनुकंपा नियुक्तीसाठी दिवंगत शासकीय कर्मचाऱ्यांच्या कुटुंबातील पात्र नातेवाईकाने शासकीय अधिकारी/कर्मचारी दिवंगत झाल्याच्या दिनांकापासून एक वर्षाच्या मुदतीत संबंधीत नियुक्ती प्राधिकाऱ्याकडे विहित नमुन्यात परिपूर्ण अर्ज सादर करणे आवश्यक आहे. (शासन निर्णय, २२/८/२००५ व शासन परिपत्रक, दि. ०५.०२.२०१०)

(आ) सेवेत असताना दिवंगत झालेल्या कर्मचाऱ्यांच्या कुटुंबातील अज्ञान वारसदाराच्या बाबतीत एकाने सज्ञान म्हणजे १८ वर्षांचा झाल्यावर एक वर्षाच्या आत अनुकंपा नियुक्तीसाठी परिपूर्ण अर्ज सादर करणे आवश्यक आहे.

शासन निर्णय, ११.९.१९९६ व शासन परिपत्रक, दि.०५.०२.२०१०)

(इ) पात्र वारसदारास विहित १ वर्षाच्या मुदतीनंतर २ वर्ष इतक्या कालावधीपर्यंत (मृत्यूच्या दिनांकापासून ३ वर्षापर्यंत) तसेच दिवंगत शासकीय कर्मचाऱ्यांच्या अज्ञान वारसदाराच्या बाबतीत तो उमेदवार सज्ञान झाल्यानंतर विहित १ वर्षाच्या मुदतीनंतर २ वर्षापर्यंत (सज्ञान झाल्यानंतर ३ वर्षापर्यंत) अर्ज सादर करण्यास विलंब झाल्यास असा विलंब क्षमापित करण्याचे अधिकार संबंधीत मंत्रालयीन प्रशासकीय विभागाच्या विभाग प्रमुखांना देण्यात येत आहेत."

18. Case of the Petitioner as set out in the petition is that Petitioner was under an impression of his mother having filed an Application seeking appointment on compassionate ground after the

death of his father. Thus, it is not the case of the Petitioner of the Petitioner not being aware of his entitlement to get compassionate appointment in terms of the Government Resolution dated 21.09.2017. Paragraph No. 15G of the memo of petition, is extracted herein below:-

“G. That the Petitioner was under impression that his mother has already filed Application for getting service on compassionate ground after the death of his father.”

19. The Hon’ble Supreme Court in the case of the **State of West Bengal Vs. Debabrata Tiwari & Ors¹**, after considering its earlier pronouncement, has laid down the following principles in paragraph Nos. 32 to 40, which reads as under:

32. On consideration of the aforesaid decisions of this Court, the following principles emerge:

32.1. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives i.e. to enable the family of the deceased to get over the sudden financial crisis.

32.2. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

32.3. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

32.4. That compassionate appointment should be provided immediately

¹ (2025) 5 SCC 712

to redeem the family in distress. It is improper to keep such a case pending for years.

32.5. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.

33. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the breadwinner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of a breadwinner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate appointment would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.

34. As noted above, the sine qua non for entertaining a claim for compassionate appointment is that the family of the deceased employee would be unable to make two ends meet without one of the dependants of the deceased employee being employed on compassionate grounds. The financial condition of the family of the deceased, at the time of the death of the deceased, is the primary consideration that ought to guide the authorities' decision in the matter.

35. Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, courts or other relevant

authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in Hakim Singh [Haryana SEB v. Hakim Singh, (1997) 8 SCC 85 : 1998 SCC (L&S) 31] would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependants of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.

36. Laches or undue delay, the blameworthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, in Lindsay Petroleum Co. v. Prosper Armstrong Hurd [Lindsay Petroleum Co. v. Prosper Armstrong Hurd, (1874) LR 5 PC 221] as under : (LR pp. 239-40)

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy.”

37. Whether the above doctrine of laches which disentitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a person by the High Court in the exercise of its power under Article 226 of our Constitution, came up for consideration before a Constitution Bench of this Court in Moon Mills Ltd. v. M.R. Meher [Moon Mills Ltd. v. M.R. Meher, 1967 SCC OnLine SC 117 : AIR 1967 SC 1450] . In the said case, it was regarded as a principle that disentitled a party for grant of relief from a High Court in the exercise of its discretionary power under Article 226 of the Constitution.

38. In State of M.P. v. Nandlal Jaiswal [State of M.P. v. Nandlal Jaiswal,

(1986) 4 SCC 566] this Court restated the principle articulated in earlier pronouncements in the following words : (SCC pp. 594-95, para 24)

24.... the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this Rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

39. While we are mindful of the fact that there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution, ordinarily, a writ petition should be filed within a reasonable time, vide Jagdish Lal v. State of Haryana [Jagdish Lal v. State of Haryana, (1997) 6 SCC 538 : 1997 SCC (L&S) 1550] ; NDMC v. Pan Singh [NDMC v. Pan Singh, (2007) 9 SCC 278 : (2007) 2 SCC (L&S) 398] .

40. Further, simply because the respondent-writ petitioners submitted their applications to the relevant authority in the year 2005-2006, it cannot be said that they diligently pursued the matter and had not slept over their rights. In this regard, it may be apposite to refer to the decision of this Court in State of Uttaranchal v. Shiv Charan Singh Bhandari [State of Uttaranchal v. Shiv Charan Singh Bhandari, (2013) 12 SCC 179 : (2013) 3 SCC (L&S) 32] , wherein the following observations were made : (SCC p. 184, para 19)

“19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.”

20. Records bear out that Petitioner is 34 years of age.

Application for compassionate appointment was made by the Petitioner

in the year 2014, after nine (9) years from the demise of Bhagwandas. Said application was not disposed till the year 2023. Petitioner did not approach this Court seeking a writ in the nature of mandamus against the Respondent No.2 for consideration of his application 02.04.2014. Said Application was rejected on 30.01.2023. Petitioner without questioning the said rejection made representations dated 02.09.2024, 25.09.2024, 12.11.2024 and 23.11.2024 repeating his request for compassionate appointment. On the face of the rejection order dated 30.01.2023, the subsequent representations were not tenable. Said representations were rejected on 04.12.2024.

21. The object of compassionate appointment is to provide succor to the family of the deceased employee who dies in harness. Government Resolution dated 21.09.2017 provides for time limit for making an Application by the family member of the deceased employee. Appointment on compassionate grounds is not a source of recruitment. Petitioner and his family members have received the gratuity and other pensionary benefits payable to the pension account of Bhagwandas. There is no justification much less any legally acceptable reasons put forth by the Petitioner for the belated filing of the Application seeking compassionate appointment. Averments as to whether the family is in

financial crisis, liabilities of the family, if any, the age, dependency and marital status of its members, together with the income from any other source are missing in the petition. Applying the law in the case of State of West Bengal (*supra*), no case for indulgence is made out by the Petitioner.

22. In view of the above, we do not find any illegality in the rejection orders made by the Respondent No.2, rejecting the requests made by the Petitioner for compassionate appointment, almost after 10 years from the demise of Bhagwandas.

23. Petitioner is not entitled to any reliefs, consequently the **Writ Petition is dismissed**, with no order as to costs.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)