



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

WRIT PETITION NO.1373 OF 2022

Dinesh S/o Ankush Sawarkar,

Age : about 34 years,

R/o : Gajraj Complex, 3rd Floor, Plot No.F-1,

New Poanzara, Mahadula, Koradi,

Dist. Nagpur.

... **Petitioner**

Versus

1. Executive Engineer,

through Maharashtra State Electric Distribution

Co. Ltd., Nagpur MIDC Urban Division,

Butibori, Plot No.57, Sector G,

Meghdoot City, Butibori,

Dist. Nagpur.

2. Chief Engineer,

through Maharashtra State Electric Distribution

Co. Ltd., Nagpur Zone, Ground Floor,

Vidhyut Bhavan, Katol Road,

Nagpur-440013.

3. Chairman & Managing Director,

through Maharashtra State Electricity

Distribution Co Ltd., Prakashgad,

Plot No.G-9, Bandra (E),

Mumbai-51.

... **Respondents**

Shri S.S. Meshram, Counsel for Petitioner.

Shri P.V. Bawankule, holding for Shri S.V. Purohit, Counsel for Respondents.

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

Date : May 07, 2025

ORAL JUDGMENT (PER NITIN W. SAMBRE, J.) :

1. Heard. **Rule.** Shri S.V. Purohit, learned counsel appearing for the respondents, waives the notice of hearing. Heard Rule by consent of the learned counsel for the respective parties.
2. The father of the petitioner was initially appointed as a Helper on January 04, 1984 and subsequently rose to the post of a Senior Technician.
3. The father of the petitioner met with an accident while discharging his duties on August 20, 2016 and after recovery, resumed his duties.
4. It appears that subsequent thereto, the father of the petitioner attended the competent Medical Board from the office of Indira Government Medical College and Hospital, Nagpur, which declared him completely and permanently incapacitated for further service. This has led to the termination of the services of the father of the petitioner vide order dated April 22, 2018. Whether the permanent incapacitation of the father of the petitioner is by virtue of the alleged accident dated August 20, 2016 when he was discharging his duties or otherwise, in our opinion, will have hardly any impact on making of the Scheme applicable to the case of the petitioner. Clause 1 of the said Scheme, which is relevant, is reproduced hereinbelow :

“Scheme:

1. *The scheme shall cover the cases of the dependent of the employees who on due selection by the Competent Selection Committee was working either against permanent or temporary or supernumerary posts and-*

(i) *Who expired while in service (which shall also include the cases wherein the competent court declared an employee as ‘nowhere’ or ‘dead’ in case of missing employee).*

Or

(ii) *Who met with non-fatal accident while on duty and declared permanent total disabled for employment and whose services are terminated by declaring him invalidated from service.*

Or

(iii) *Who are permitted to retire prematurely on medical ground before attaining the age of 50 years.*

Or

Whose services are terminated by declaring him invalidated from service on account of incapacitation for service by bodily or mental infirmity.

Explanation- Words “retired prematurely on medical grounds” means those employees who are permitted to retire prematurely on medical grounds by declaring them invalidated and/or whose services are terminated, being declared medically unfit and invalidated before attaining the age of 50 years.”

5. If we consider the Scheme, which is reproduced hereinbefore, it is quite apparent that the services of the father of the petitioner were terminated by declaring him invalidated from service on account of

incapacitation by bodily or mental infirmity. Merely because the father of the petitioner at the relevant time was of 58 years that by itself will not incur the disqualification in favour of the petitioner to seek employment as the Scheme in question addresses the issue of grant of employment in case the termination of the employee is on the basis of incapacitation for service by bodily or mental infirmity.

6. Shri Bawankule, learned counsel appearing for the respondents, has relied on Clause (iii) of the aforesaid Scheme and Explanation thereto. He has claimed that the benefit under the Scheme can be extended only in case the termination of services after being declared the employee invalidated or medically unfit before attaining the age of 50 years.

7. If we consider the case of the petitioner, admittedly, the father of the petitioner suffered an accident on August 20, 2016 resulting into the fracture of his arm and the subsequent treatment was required to be administered to him for the brain injury at the Indira Gandhi Medical College and Hospital, Nagpur in 2017. The report submitted by the President of the Medical Board to the respondent No.1-Executive Engineer on March 02, 2021 speaks of the father of the petitioner undergoing operation on August 21, 2016 after having suffered a fall on duty, referred above, where he suffered the following injury :

“Fracture L2 with right lower radius fracture with superior & interior rami.”

8. Thereafter the father of the petitioner was hospitalized in Kunal Hospital, Nagpur for further treatment and was discharged on March 06, 2017. The father of the petitioner was again re-admitted for brain stroke after six months. The MRI Scan of the father of the petitioner done on February 27, 2017 speaks as under :

“Acute Cerebrovascular episode with encephalopathy with right hemiparesis with severe urinary tract infection with recently operated case of polytrauma fracture right radius, fracture L2 vertebra, right pubic rami fracture.

Acute non-haemorrhagic left MCA territory infarct involving the posterior aspect of left putamen and corona radiata.

Flattening with peripheral hemosiderin deposit in right high fronto-parietal lobes, likely suggestive of post traumatic changes.

T2 and Flair discrete hyperintensities in periventricular white matter, likely represent mild microangiopathic changes.”

9. If we consider the very Scheme in the backdrop of the aforesaid injuries suffered by the father of the petitioner and analyze the submissions of the learned counsel for the petitioner, then an employee, who suffers termination of services after declaring him invalidated on account of incapacitation by bodily or mental infirmity, cannot claim employment for his son or daughter. The said Clause, in our opinion, is contrary to the public policy and the object which is sought to be achieved through the Scheme in question. The fact about invalidation from service because of bodily or mental infirmity cannot be said to be within the control of the

employee and he cannot be punished for having suffered such injury in discharge of duties or otherwise by not extending the benefit of the Scheme. The respondents must be sensitive to the social object which they intend to achieve by implementing the Scheme and that being so, we are not in agreement with the submission of the learned counsel for the respondents that in view of the Explanation, referred above, the claim put forth by the petitioner cannot be granted.

10. The fact remains that having regard to the aforesaid factual background, the proposal submitted for grant of compassionate appointment was not approved by the higher authority, as could be inferred from the communication dated August 13, 2021. Perusal of the said communication would reveal that there are no reasons furnished by the respondent-employer for refusing to grant the employment, however such reasons are sought to be justified based on the reply stating that the father of the petitioner post his termination has received the amount of contributory provident fund of Rs.24,91,465/-, leave encashment of Rs.1,62,553/- and gratuity of Rs.14,91,161/-.

11. The receipt of the aforesaid amount by the father of the petitioner post his termination, whether can be said to be sufficient enough to deny the claim for appointment, is also required to be looked into. The record depicts that the Medical Board has certified that the father of the petitioner is permanently incapacitated due to brain and lumber injury and as such

he needs constant medical attention. Not only the aforesaid, but the fact about the family of the petitioner having suffered heavily on financial side due to two major surgeries undergone by the father of the petitioner is also required to be taken into account.

12. It is well settled position of law that once the order does not contain reasons, such reasons cannot be substantiated through subsequent affidavit and such conduct on the part of the respondent-employer amounts to denial of principles of natural justice.

13. The nature of injuries suffered by the father of the petitioner can be inferred from the certification issued by the President of the Medical Board, as reflected in the communication dated March 02, 2021 addressed to the respondent No.1-Executive Engineer.

14. As such, it has to be inferred that under the Scheme in question, the petitioner cannot be said to be disqualified for seeking employment on the compassionate ground. Apart from above, we are equally required to be sensitive to the law laid down by the Supreme Court in the case of **Umesh Kumar Nagpal Vs. State of Haryana**, reported in **1994(4) SCC 138**, and to the fact that it was the father of the petitioner during whose employment the compassionate appointment on the ground of medical disqualification of the employee was claimed and the said claim was continuously persuaded with the respondent-employer. The respondents have taken

substantial time to deal with the same and made the petitioner suffer hardships.

15. As such, there appears to be sufficient cause to infer that the grant of compassionate employment is made out from the factual matrix of the case so as to enable the family of the petitioner to tide over the crises which they are required to meet in view of the accident and termination of the services of the father of the petitioner.

16. Apart from above, in the matter of **Nilima Raju Khapekar Vs. Executive Director, Bank of Baroda, Baroda and others**, reported in **2022(3) Mh.L.J. 441**, the Full Bench of this Court in Paragraph 35 of the judgment has made the following observations to which we must be sensitive :

“35. It would suffice for the purpose of the present reference to observe that based on our consideration of the provisions of the unchallenged scheme, as framed, as well as the decisions of the Supreme Court in Umesh Kumar Nagpal (supra), Kunti Tiwary (supra), B. Kishore (supra), Somvir Singh (supra), Ashwini Kumar Taneja (supra), and Amrita Sinha (supra), we are not persuaded to agree with Mr. Akhtar that payment of amounts towards pension, provident fund and gratuity cannot be considered as an impediment or an embargo in the appointment of an eligible member of the family on compassionate basis. This is a fallacious argument when viewed in the light of the first and foremost condition for compassionate appointment that the family member of the employee dying in harness have to demonstrate indigence as discussed above.

In evaluating the claim for compassionate appointment in terms of any scheme containing a clause similar to clause 5, as framed by BoB, we hold that it would be the obligation of the employer bank to assess and evaluate the financial condition of the family of the deceased employee and only upon a satisfaction being reached that the family, being indigent, needs immediate succor by way of an appointment on compassionate ground, it may proceed to determine eligibility on the other counts.”

17. As such, the writ petition stands allowed. We hereby quash and set aside the impugned communication dated August 13, 2021 and direct the respondents to issue an appointment order to the petitioner in Class-IV category in any case by July 15, 2025.

18. Rule is made absolute in the aforesaid terms. No order as to costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)