

Suresh S/o Chandrakant Raut,
Aged about 40 years, Occ. Nil,
R/o. C/o. Data Mandir, Karanja,
Tah. Karanja & Dist. Washim

... **PETITIONER**

// VERSUS //

**Divisional Controller,
MSRTC, Akola Division, Kaulkhed,
Akola, Tah. & District Akola**

... RESPONDENT

Shri S.T. Harkare, Advocate for the Petitioner
Shri P.S. Gawai, Advocate for the Respondent

CORAM : M.S. JAWALKAR, J.
MARCH 06, 2025

ORAL JUDGMENT:-

- (1) Heard finally by consent of learned Counsel for the respective parties at the stage of admission.
- (2) The Petitioner challenges the order dated 30/08/2024 passed by the learned Member, Industrial Court, Akola in

Complaint (ULP) No. 18/2014. The Petitioner filed the Complaint against the Divisional Controller, MSRTC, Akola under Section 28 read with Schedule IV Item 9 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as “the said Act”) wherein the relief for appointment on compassionate ground was sought.

(3) Learned Counsel for the Petitioner contends that the father of the Petitioner was working as a Driver with MSRTC, he met with an accident and died on 20/05/1983. It is his contention that as per the Rules and Regulations, the Petitioner is entitled for compassionate appointment. It is his contention that at the time of death of his father, he was one year old. He applied for compassionate appointment after he attained the age of majority. His claim was rejected on the ground that his father had not completed five years of service. The Respondent appeared in the matter and filed its reply before the learned Industrial Court stating therein that the father of the Petitioner has not completed five years of service and the claim of the Complainant is filed after 25 years and on

both these counts, the Application for compassionate appointment cannot be considered. The learned Industrial Court recorded a finding that the Complainant failed to prove that there was unfair labour practice under Item 9 of Schedule IV of the said Act by not implementing the settlement and by not granting appointment on compassionate ground. It is specifically observed by the learned Industrial Court that the Complaint is filed after 25 years of the death of father of the Petitioner. The learned Industrial Court also considered the affidavit filed by the Complainant dated 16/09/2022 wherein his age is shown as 38 years. As such, correct inference is drawn that the Complainant has attained the age of majority in the year 2002 itself. There is no other evidence placed on record to show that he has attained the age of majority in any other year.

(4) Learned Counsel for the Petitioner submitted that the Petitioner has filed the Application in the year 2007, and thereafter, made many Representations to the Respondent and ultimately filed Complaint in the year 2014.

(5) Learned Counsel for the Petitioner relied on the judgment dated 01/02/2016 passed by this Court in Writ Petition No. 3315/2008 (Maharashtra State Road Transport Corporation vs. Smt. Pushpa Kishore Zare). It is his contention that in the said matter also, though there was contention of MSRTC that the Application is filed beyond limitation, this Court has considered the contention of the Petitioner and held that the learned Industrial Court had not framed any issue on the point of limitation and the Petitioner had not made any Application requesting the Industrial Court to frame issue on the point of limitation and to deal with the issue. However, the facts involved in the said matter are different than the facts involved in the present matter. In the said matter, the Complainant – Respondent applied for appointment on compassionate ground in 1998 i.e. within a period of one year from the death of her husband i.e. 31/08/1997. It was rejected in 1998, however, as there was change in the policy in 2001 and certain conditions were modified, the Respondent again applied in 2005 requesting for appointment on compassionate ground which came to be rejected in 2005. In the present matter, the father of the Petitioner expired on 20/05/1983.

Though the mother of the Petitioner had applied, there is no record nor her name is taken on waiting list of the persons proposed to be appointed on compassionate ground. It appears that the Petitioner attained the age of majority in 2002, however, he has not filed any Application till 2007. The Respondent rejected his Application vide order dated 21/07/2009, however, there is no Complaint filed till the year 2014.

(6) Learned Counsel for the Respondent relied on the judgment of the Hon'ble Apex Court in the case of **State of West Bengal vs. Debabrata Tiwari & others reported in 2023 LiveLaw (SC) 175**. In the said judgment, after considering the various decision of the Hon'ble Supreme Court, the principles which emerge were laid down. The Hon'ble Supreme Court, in Paragraph Nos. 7.2, 7.3 & 7.5, held as under:-

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

i. 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.

ii. 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.

iii. 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.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. 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.

7.3. 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 bread-earner 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 bread-winner, 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 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.

7.4

7.5. *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 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 dependents 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.”

(7) Thus, in view of the above judgment of the Hon’ble Supreme Court, delay of several years for the reason either on the part of the Petitioner in claiming compassionate appointment or the Authorities in deciding such claim, the sense of immediacy is diluted and lost. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents 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. The object of granting compassionate employment is to enable the family of a Deceased Government Employee to tide over the sudden crisis by providing gainful employment to one of the dependants of

the Deceased who is eligible for such employment. That mere death of an Employee in harness does not entitle his family to such source of livelihood.

(8) Learned Counsel for the Respondent relied on the judgment of the Hon'ble Supreme Court in the case of **Umesh Kumar Nagpal vs. State of Haryana & others reported in 1994 o Supreme (SC) 516** wherein similar view is taken.

(9) In view of the above judgments of the Hon'ble Supreme Court and in view of the fact that there is no justification for not filing any Application from the date of attaining the age of majority within a period of one year and no any justification for filing the Application after five years i.e. in 2007; and thereafter for filing the Complaint in 2014, in my considered opinion, there is no error or perversity in the impugned order passed by the learned Industrial Court.

(10) Accordingly, the Writ Petition stands **dismissed**. Pending Application(s), if any, stand(s) **disposed of**.

(M.S. JAWALKAR, J.)