(2022) 08 BOM CK 0081

In the Bombay High Court

Case No : Writ Petition No. 9119, 10556 Of 2021

Amol And Others — APPELLANT

Vs

State Of Maharashtra And Others — RESPONDENT

Date of Decision : 20-08-2022

Acts Referred:

Citation : (2022) 08 BOM CK 0081

Hon'ble Judges : Mangesh S. Patil, J;Sandeep V. Marne, J

Bench : Division Bench

Advocate : Mayur Subhedar, Chaitanya Dharurkar, M. A. Deshpande, V. C. Patil, U. B. Bondar

Final Decision : Allowed

Judgement

Sandeep V. Marne, J

1. Rule. Rule made returnable forthwith. With the consent of the parties taken up for final hearing at the stage of admission.

2. The issue involved in the present petitions is somewhat unique. Whether a permanent employee on the establishment of Zilla Parishad, who was/is paid from self generated funds/income of the Zilla Parishad is eligible for application of compassionate appointment scheme is the issue, which is attracted for our attention in the present petitions. There is no dispute that Zilla Parishad, Aurangabad has adopted the scheme for compassionate appointment formulated by the State Government. Therefore, wards of employees working on regular establishment of the Zilla Parishad are eligible for being considered for compassionate appointment. The Zilla Parishad has sought to create a separate category of employees for the purpose of their exclusion from the scheme for compassionate appointment. This separate category is in respect of the employees who are working under Water Supply Scheme and paid from self generated funds/income of the Zilla Parishad and whose salaries are not paid through any funds received from the State Government.

3. Since common question is involved in both these petitions, they are decided by this common judgment. We shall consider the facts involved in the Writ Petition No. 9119 of 2021 for deciding the issue the same are as under :

The petitioner's father late Sahebrao Kadubal Suryawanshi was initially engaged as daily wages employee in the water supply department of the respondent No. 3/ Zilla Parishad. He, along with his cohorts had filed proceedings before the Industrial Court inter alia for appointment on Converted Regular Temporary Establishment (C.R.T.E.). The Industrial Court allowed the said complaint and the order of the Industrial Court came to be upheld by this Court vide judgment and order dated 18.11.2016. However, before the benefits of orders of the Industrial Court and this Court could be extended to the father of the petitioner, he unfortunately expired on 09.05.2011. On the death of his father, petitioner filed application for grant of compassionate appointment on 25.07.2011.

4. In the mean time, the orders of the Industrial Court and this Court came to be implemented by the Zilla Parishad by passing order dated 13.12.2017, by which 108 employees came to be taken on C.R.T.E. basis on the establishment of the Zilla Parishad. So far as petitioner's father is concerned, he came to be taken on C.R.T.E. basis with effect from 01.04.1995. Under condition No. 9 to the said order dated 13.12.2017, it was stipulated that the responsibility of payment of salary in respect of the employees included in the order was that of the Zilla Parishad and that no grant/aid would be received from the State Government.

5. In quick succession, another order dated 06/14.09.2018 came to be passed by the respondent/Zilla Parishad, by which 41 employees came to be treated as regular Zilla Parishad employees. The said order included name of the petitioner's father, who was treated as regular employee of the Zilla Parishad with effect from 01.04.1995. Curiously, this time there was no condition for payment of salary through own funds of the Zilla Parishad in the order dated 06/14.09.2018.

6. The petitioner kept on persuading his request for compassionate appointment. After prolonged delay, the respondent Zilla Parishad passed order dated 05.04.2021 rejecting the case of the petitioner on solitary ground that the compassionate appointment scheme is not applicable to the employees who are paid salary from self generated funds/income of the Zilla Parishad. The petitioner has challenged the said order dated 05.04.2021 in the present petition.

7. Similar are the facts in Writ Petition No. 10556 of 2021, where also the name of the father of the petitioner was included in orders dated 13.02.2017 and 06/14.09.2018.

8. We have heard learned advocate for the petitioners, learned advocates for the respondent/Zilla Parishad and the learned Additional Government Pleader and the learned Assistant Government Pleader for the State Government in respective matters.

9. Mr. Subhedar, learned advocate appearing for the petitioners has relied upon the order dated 06/14.09.2018 to contend that the petitioner’s father was already treated as regular employee of the Zilla Parishad and that therefore, he could not be put in a separate category of employees paid from self generated funds/income of the Zilla Parishad. He has relied upon following decisions of this Court :

I. Santosh Ashok Pradhan Vs. The State of Maharashtra and others dated 12.12.2012 in Writ Petition No. 461 of 2012.

II. Ashish Vinayak Kute Vs. The State of Maharashtra and others dated 02.07.2013 in Writ Petition No. 5801 of 2012.

III. Ashish Vinayak Kute Vs. The State of Maharashtra and others dated 04.12.2014 in Writ Petition No. 5910 of 2014.

IV. Bhakti Nandkumar Jagdale Vs. The State of Maharashtra and others dated 12.09.2017 in Writ Petition No. 10422 of 2016.

10. Mr. Patil and Mr. Biradar, learned advocates appearing for the respondent Zilla Parishad have submitted that since the petitioner’s father was working under water supply department and was being paid from self generated funds/ income of the Zilla Parishad and not from any funds from the State Government, the compassionate appointment scheme is inapplicable in view of the Government Resolutions dated 26.10.1993 and 21.10.2017. They have further submitted that as per the revised consolidated scheme for compassionate appointment formulated vide Government Resolution dated 21.09.2017, the said scheme is inapplicable to the category of employees to which the petitioners’ father belong. They have relied upon condition No. 9 in the order dated 12.12.2017, which we have already referred to hereinabove.

11. Mrs. M. A. Deshpande, learned Additional Government Pleader and Mr. A. S. Shinde, learned Assistant Government Pleader for respondent State have relied upon the judgment of the Apex Court in the case of State of Madhya Pradesh and others Vs. Amit Shrivas reported in (2020) 10 SCC 496 and have contended that present case is squarely covered by the said judgment under which the Apex Court has upheld separate classification of employees engaged on work charge/ contingency basis for inapplicability of compassionate appointment scheme.

12. Rival contentions of the parties now fall for our consideration.

13. There is no dispute that the compassionate appointment scheme formulated by the State Government has been adopted by the respondent/Zilla Parishad. On perusal of the said scheme formulated vide Government Resolution dated 21.09.2017, it is clear that the said scheme has not created any separate group of employees who are paid from self generated funds/income of the Zilla Parishad. No document is produced on record by the respondent Zilla Parishad to demonstrate that while adopting the scheme formulated by the State Government, the respondent Zilla Parishad has specifically excluded the

employees paid from self generated funds/income of the Zilla Parishad.

14. Undeniably the petitioners' father came to be regularized in service of the Zilla Parishad by order dated 06/14.09.2018. The said order not only treats petitioners' father as regular Zilla Parishad employees with effect from 01.04.1995, but it uses the words 'vko';d R;k loZ iz;kstukFkZ* (for all necessary purposes). Thus, the employees included in the order dated 06/14.09.2018 would be entitled to all the benefits which are admissible to the employees on regular establishment of the Zilla Parishad. Therefore, it is difficult to comprehend as to how the petitioners' father could be treated as belonging to a separate group of employees being paid from self generated funds/income of the Zilla Parishad, even after passing order dated 06/14.09.2018. In fact, by the said order, petitioners' father was brought on the regular establishment of the Zilla Parishad.

15. It is also an undisputed fact that the petitioner's mother is being paid family pension after death of the petitioner's father. This fact has been pointed out in the affidavit in reply filed by respondent Nos. 2 and 3. It is therefore difficult to fathom as to how the employee who is brought on regular establishment of the Zilla Parishad for all necessary purposes and whose widow is been paid family pension, can be kept in a separate compartment only for the purposes of exclusion from applicability of compassionate appointment scheme.

16. We could have allowed the petitions on the basis of the above findings only. However, as the State Government has relied upon the decision of the Apex Court in the case of State of Madhya Pradesh (supra), it is necessary to deal with the same. In the first blush, it appears that the facts of the case before the Apex Court are somewhat similar to the one involved in the present case. However on closure scrutiny, it is seen that there is marked distinction between the two cases. In the policy formulated by the Madhya Pradesh State Government for compassionate appointment, there was a specific provision in para 12.1, which read as under :

"12.1 When employees receiving salary from work charge/contingency fund and daily wager employee die, they would not be eligible for the compassionate appointment; however Rs.1 lakh in one installment in the name of compassionate grant shall be given to the dependent member of the family nominated by them. The amount of gratuity shall not be included in it. The payment of this amount shall be given from the salary head under the head of work charge/contingency of the concerned department."

17. Thus, there was a specific exclusion of employees receiving salary from work charge/contingency funds and daily wager employees for application of compassionate appointment scheme and instead they were to be paid compassionate grant of Rs. 1,00,000/- in lieu of compassionate appointment. We therefore repeatedly enquired with the learned counsel appearing for the Zilla Parishad as well as the State Government as to whether there is any similar

stipulation in the scheme formulated by the State Government which is applicable to the respondent Zilla Parishad. However, they were unable to point out any such similar provision in the scheme. We have also carefully gone through the Government Resolution dated 21.09.2017 by which consolidated instructions for compassionate appointment have been formulated by the State Government in which there is no specific provision for excluding the employees who are paid from self generated funds/income of the Zilla Parishad. We are therefore of the considered opinion that the judgment of the Apex Court in the case of State of Madhya Pradesh (supra) has no application to the facts of the present case.

18. On the contrary Mr. Subhedar, learned counsel for the petitioners has relied upon three orders passed by this Court relating to the Zilla Parishads. In the case of Santosh Ashok Pradhan (supra) the case related to the same Zilla Parishad i. e. respondent Nos. 2 and 3. In that case application for compassionate appointment was rejected on the ground that the deceased employee therein was working on the post of electrician which was not funded by the Government and that the same was created by the Zilla Parishad. It was paying salary from its maintenance and repairs funds. This Court, however repealed the objection of the Zilla Parishad in that case and held as under :

5. We are surprised on reading this statement made in the affidavit in reply by the Deputy Chief Executive Officer. The person holding the post in the Zilla Parishad as a Deputy Chief Executive Officer, is expected to know that the policy formulated by the Government in respect of making appointments on compassionate ground is equally applicable to the Zilla Parishads. The affidavit in reply appears to have been tendered without verifying the correctness of the contentions therein and without scrutinizing the record of the Zilla Parishad.

6. On perusal of the order passed by the Zilla Parishad on 10.12.2008 making appointment of one Rahul Purushottam Kothale on compassionate ground in place of his father, it would be evident that the stand taken by the Deputy Chief Executive Officer, Zilla Parishad is incorrect. The father of Rahul Kothale was also similarly placed as that of the father of the petitioner. The father of Rahul Kothale was also been paid salary out of the Maintenance and Repairs Funds. Since the petitioner is also similarly situated as that of Rahul Kothale, there was no reason for the Zilla Parishad to refuse to consider his claim.

7. For the reasons recorded above, we are of the view that the order passed by Zilla Parishad on 03.06.2011 thereby refusing to consider the application tendered by the petitioner for appointing him on compassionate ground in place of his father, deserves to be quashed and set aside and the same is accordingly quashed and set aside. The Chief Executive Officer, Zilla Parishad, Aurangabad is directed to decide the application tendered by the petitioner for making his appointment on compassionate ground, on its own merits and considering the policy applicable to the Zilla Parishad. The Chief Executive Officer, Zilla Parishad, Aurangabad is directed to take decision as expeditiously as possible and

preferably within 3 months from today. Rule is accordingly made absolute. There shall be no order as to costs.

19. In the case of Ashish Vinayak Kute (supra), the deceased employee was working on the post of Hand Pump Electrician, which was created by the Zilla Parishad by paying salaries and other benefits through its maintenance and repairs fund. Relying on the case of another employee whose salary was also paid from maintenance and repairs fund of the Zilla Parishad and whose ward was granted compassionate appointment, this Court allowed the writ petition directing consideration of the case of the petitioner therein for compassionate appointment. It appears that despite the order dated 02.07.2013 passed in Writ Petition No. 5801 of 2012, the Zilla Parishad Auragabad once again rejected the case of the petitioner therein for compassionate appointment on the ground that his father was not a permanent employee. Therefore, this Court was again required to pass an order dated 04.12.2015 in Writ Petition No. 5910 of 2014 holding that it was not open for the Zilla Parishad to come to the conclusion that the employee was not permanent on account of the previous order dated 02.07.2013. It was therefore directed to treat the deceased employee as permanent for the purpose of consideration of the case for compassionate appointment.

20. In the case of Bhakti Nandkumar Jagdale (supra), the application for compassionate appointment was rejected on the ground that the salary of the deceased employee was paid from Zilla Parishad funds and not from the Government funds. By relying on various orders previously passed, this Court allowed the petition directing consideration of the case for compassionate appointment by treating the deceased employee as permanent. Similar orders are also passed in the case of Shubham Papanna Darelu Vs. The State of Maharashtra dated 18.04.2016 in Writ Petition No. 10296 of 2015.

21. We are therefore of the considered opinion that the respondent Zilla Parishad erred in rejecting the case of the petitioners for compassionate appointment solely on the ground that the salary of the deceased employee was being paid through the self generated funds/income of the Zilla Parishad. We hold that even the employees who were being paid initially from self generated funds/income of the Zilla Parishad and later on conferred permanent status and brought on permanent establishment of the Zilla Parishad are also required to be treated as covered in the scheme for compassionate appointment.

22. Consequently, we allow the present petitions and direct the respondent/Zilla Parishad to consider the cases of the petitioners for compassionate appointments on their own merits within a period of three (03) months from today and communicate orders on the applications to the respective petitioners.

23. Rule is made absolute in above terms. There shall be no orders as to costs.

