

(2017) 12 BOM CK 0101
In the Bombay High Court
Case No : 13905 OF 2017

Dinesh Shirish Saigunde

APPELLANT

Vs

The State of Maharashtra & Ors

RESPONDENT

Date of Decision : 04-12-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 12 BOM CK 0101

Hon'ble Judges : R. M. Borde, Vibha Kankanwadi

Bench : DIVISON BENCH

Advocate : D. B. Pawar, S. B. Yawalkar

Judgement

1. Taken up for final hearing at the admission stage with consent of both the parties.

2. Question about appointment on compassionate ground after lapse of considerable time has been answered in many pronouncements of the Hon'ble Supreme Court. In the present petition again the same question has been posed. The Petitioner has prayed for writ in the form of directions to respondent No. 3 and 4 to appoint him on compassionate ground.

3. Petitioner's father Shirish Sopanrao Saigunde was working as Pharmasist on the establishment of respondent No. 4. Shirish Saigunde expired on 08122003. Petitioner was aged 8 at that time. His father was the only breadwinner. Since the family was facing financial crises, his mother accepted appointed as Safai Kamgar. She served for 2 years, but was required to leave the job due to her ill health. Petitioner was aged 11, at that time. He completed Diploma in Pharmacy. Petitioner is aged 22 years at the time of petitioner. He has stated that he is willing to join the service in place of his father. His mother and elder brother have given consent. He had therefore submitted application on 05072017 for appointing him on compassionate ground in place of his father to respondents. However there is no positive response. Hence, this petition has been filed by

invoking the writ jurisdiction of this Court under Art. 226 of Constitution of India.

4. It has been submitted by the learned Advocate appearing for petitioner that mother of the petitioner had taken appointment for 2 years on compassionate ground, but could not continue further due to her ill health. Now, petitioner intends to get the appointment on compassionate ground. Petitioner has exercised option immediately after he has become major and after he has acquired requisite qualification. Respondents ought to have considered the request of the petitioner.

5. Per contra, it has been submitted on behalf of respondents that petition suffers from delay and laches.

6. It is not in dispute that father of the petitioner was serving as Pharmasist on the establishment of respondent No. 3, 4 and he died, when he was still in service. It is also further not in dispute that petitioner was minor at that time. There is policy of the Government to give appointment to the heir of deceased employee, if the employee had died when in service. There are certain conditions on which such appointments are made. The said policy has undergone changes at various times. Many terms and conditions are added or subtracted. However, the main intention behind providing such appointment is to give financial stability to the family of such employee. Earlier the benefit was given to a son only, but later on the benefit is extended to a married daughter also. Petitioner herein is the married daughter of the deceased employee. However, it is required to be seen whether she is entitled to get appointment on compassionate ground. Any person, who is a legal heir of deceased government employee is not entitled to get appointment on compassionate ground as of right. Such appointments are also subject to the judicial pronouncements on the subject.

7. In the case of Jagdish Prasad vs. State of Bihar, (1996) 1 SCC 301, it was observed that, "The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family." Further in MMTC Ltd. vs. Pramoda Dei, (1997) 11 SCC 390 it is observed by the Apex court that, "As pointed out by this Court, the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment and that mere death of an employee does not entitle his family to compassionate appointment."

In the case of S. Mohan vs. Government of T.N., (1998) 9 SCC 485 it has been observed that,

"The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

Herein this case, Petitioner's father expired on 8122003. His widow Smt. Madhuri Shirish Saingude had made an application for getting an appointment on compassionate ground and accepted the service. The documents on record shows that petitioner's mother had remained absent without assigning any reason for more days and therefore it appears that some administrative action has been taken against her in 2006. Thereafter only in 2017 an application has been given by petitioner for appointment on compassionate ground. When the appointment was given to one of the heir is lost by them, any cause of action for such appointment did not survive thereafter. Thus it can be seen that the family has survived since 2003 to 2017 and the immediate financial crises have been overcome.

8. In *Umesh Kumar Nagpal vs. State of Haryana*, (1994) 4 SCC 138 it has been held that, "The compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

Further in the case of *Punjab National Bank vs. Ashwini Kumar Taneja*, (2004) 7 SCC 265, it was observed by the court that,

"It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis."

9. Thus, the pronouncements indicated above would give a clear indication that the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed as of right and it can not be offered after a lapse of long time. The excuses given by petitioner and his mother for not continuing her job are unacceptable. Those excuses will not give any right to the petitioner to fetch a job on compassionate ground. Now after such a long time, petitioner can not be given appointment on compassionate ground so as to give go bye to the regular recruitment process, when the intention of the compassionate appointment no longer survives.

10. Taking into consideration abovesaid reasons, there is no merit in the petition. This is not a fit case, where we should exercise our extraordinary jurisdiction under Art. 226 of Constitution of India. Hence, petition stands dismissed with no order as to costs.