

(2024) 08 BOM CK 0033
In the Bombay High Court
Case No : Writ Petition No. 6031 Of 2024

Dipak Madhukar Sapkale

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 20-08-2024

Acts Referred:

Citation : (2024) 08 BOM CK 0033

Hon'ble Judges : Ravindra V. Ghuge, J;Y. G. Khobragade, J

Bench : Division Bench

Advocate : Sudhakar T. Mahajan, Neha B. Kamble, M.M. Patil Beedkar

Final Decision : Allowed

Judgement

Ravindra V. Ghuge, J

1. Rule. Rule is made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner's father passed away on 08.02.2013 while in service with Respondent No.2. The Petitioner is born on 01.01.1995. The Petitioner claims to be the only son of the deceased employee Madhukar Jatan Sapkale, who submitted an application for compassionate appointment on 18.09.2013, to Respondent No.2/ Chief Officer, Municipal Council, Amalner. By a further communication dated 17.02.2017, the Petitioner claims to have tendered certain documents including the heirship certificate.

3. The learned Advocate for the Municipal Council submits that the Petitioner did not submit the heirship certificate issued by a competent authority along with the application dated 17.02.2017. The Municipal Council called upon the Petitioner to submit the required documents. The Petitioner was called upon to tender the said documents vide the communication dated 07.08.2024. The documents mentioned in the communication dated 07.08.2024, have to be tendered by the Petitioner. This Court should not entertain disputed questions.

4. We find from the record, that in the last 11 years, the Municipal Council never called upon the Petitioner to tender the documents, which are now asked for, for the first time, vide the communication dated 07.08.2024. The defence is taken that in May, 2018, all the relatives of the deceased employee recommended the appointment of Vicky Mangal Sapkale, who is the nephew of the deceased employee. However, the record indicates that on 13.08.2018, the claim in favour of the nephew was rejected by the Municipal Council, since a nephew is not entitled and eligible to be appointed on compassionate basis in the light of clause 4(A) and (AA) of the Government Resolution dated 21.09.2017.

5. We find that the Petitioner is after the Municipal Council after filing his application dated 18.09.2013, which was filed within seven months from the death of his father. For more than 10 years, the Petitioner was not called upon by the Municipal Council to submit those documents, which are now demanded vide the communication dated 07.08.2024. Though the Petitioner is eligible and entitled for compassionate appointment, precious eleven years of his life have been wasted by the Municipal Council.

6. The Petitioner submits that he has been doing manual labour work, which would be casually available, in order to remain alive and feed himself. He has no employment, much less, a regular source of income. His father also had to suffer agonies since he had to approach the Labour Court against his termination in Complaint (ULP) No.50/1992. It was after three years later that the Municipal Council reinstated the father of the Petitioner.

7. The Honourable Supreme Court has concluded, in *Malaya Nanda Sethy vs. State of Orissa*, AIR 2022 SC 2836, that the Employer must complete the process of compassionate appointment within six months. It was concluded in paragraph No.9 as under:-

"9. Before parting with the present order, we are constrained to observe that considering the object and purpose of appointment on compassionate grounds, i.e., a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications.

We are constrained to direct as above as we have found that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach the concerned High Courts seeking a writ of Mandamus for the consideration of their applications. Even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order of rejection before the High

Court which leads to pendency of litigation and passage of time, leaving the family of the employee who died in harness in the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. After several years or are not considered at all as in the instant case.

If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies or the Rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a tardy way. We have come across cases where for nearly two decades the controversy regarding the application made for compassionate appointment is not resolved. This consequently leads to the frustration of the very policy of granting compassionate appointment on the death of the employee while in service. We have, therefore, directed that such applications must be considered at an earliest point of time. The consideration must be fair, reasonable and based on relevant consideration. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only the object and purpose of appointment on compassionate grounds can be achieved.”

[Emphasis is supplied]

8. In view of the above, this Writ Petition is allowed with the following directions :-

(a) In the light of the admitted position that the Petitioner is the only male child of the deceased employee, the requirement of the heirship certificate is dispensed with.

(b) The Petitioner shall tender the copy of his birth certificate, copy of the death certificate of his father and the ration card to Respondent No.2/ Municipal Council, within 30 (Thirty) days from today.

(c) The Petitioner shall be enlisted in the list of eligible candidates for compassionate appointment in tune with the date of his application, which is 18.08.2013 and his seniority in the eligible list should be computed from 18.09.2013. His appointment order on compassionate basis shall be issued keeping this date of the application in view.

(d) Since the Petitioner's valuable eleven years of employment have been consumed by the Municipal Council and due to the delay, he is being deprived of earning livelihood for eleven years, we are directing the Municipal Council to pay Rs.One Lakh as costs to the Petitioner, by way of compensation. The said amount shall be paid to the Petitioner within a period of 30 (thirty) days from today.

9. Rule is made absolute in the above terms.