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**(2019) 06 BOM CK 0097**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 1401 Of 2003**

Divisional Controller

APPELLANT

Vs

Ravindra And Ors

RESPONDENT

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**Date of Decision :** 21-06-2019

**Acts Referred:**

**Citation :** (2019) 06 BOM CK 0097

**Hon'ble Judges :** Ravindra V. Ghuge, J

**Bench :** Single Bench

**Advocate :** M.K. Goyanka, Manoj D. Shinde, K.N. Lokhande

**Final Decision :** Allowed

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## Judgement

Ravindra V. Ghuge, J

1. The petitioner corporation is aggrieved by the judgment of the Industrial Court dated 23.09.2002 vide which, Complaint (ULP) No.320/1996 filed by

respondent no.1 has been partly allowed and he has been granted compassionate appointment with the petitioner corporation.

2. This Court has passed a speaking order on 08.04.2003 and the impugned judgment has been stayed.

3. I have considered the strenuous submissions of the learned advocates for the respective sides and have gone through the record available.

4. The father of respondent no.1/original complainant, Shantaram Parande was a clerk with the petitioner corporation. While in service, he passed away on 24.01.1979. The original complainant was a minor and who subsequently became major in 1992. The petitioner corporation relied upon a request application submitted by the widow, mother of the complainant, that the brother of the deceased, Anton Damaji Parande, be appointed on

compassionate grounds. Based on such a request, Anton Parande, who was working as a daily wager intermittently with the corporation, was granted compassionate appointment vide order dated 23.08.1982.

5. The complainant became major in 1992 and moved an application on 23.02.1994 seeking appointment on compassionate grounds in place of his father, who had passed away 16 years ago. He was informed by the corporation vide letter dated 07.04.1994 that his mother had put forth a request application to appoint the brother of the deceased and accordingly, Anton Palande was appointed on compassionate grounds. Being aggrieved, the complainant preferred Complaint (ULP) No.199/1994 before the Industrial Court, which was dismissed by order dated 27.03.1996 as being untenable.

Respondent no.1/complainant Ravindra moved Writ Petition No.4163/1996, which was disposed off by order dated 02.09.1996 granting liberty to Ravindra to file a fresh complaint. He, therefore, preferred Complaint (ULP) No.320/1996, which has been partly allowed by the impugned judgment.

6. The learned advocate for respondent no.1/original complainant has strenuously opposed this petition and submits that this petition deserves to be dismissed. He further submits that his father had passed away 40 years ago. He is presently 45 years of age. He is now married and has children. His valuable right for compassionate appointment has been snatched away by the corporation in the most unfair manner. He is still with the hope of getting compassionate appointment and is willing to work for the remainder period of 13 years as the age of superannuation would be 58 years. In the alternative, he submits that the corporation should pay him his entire wages from 1992 till today as he had become major in 1992 and was eligible for appointment.

7. I quite see that this case has sprung up peculiar facts. The deceased passed away on 24.01.1979 and on the consent of the mother of the complainant/ widow of the deceased, the brother of the deceased was granted compassionate appointment. It cannot be accepted that the widow had forgotten that the brother of the deceased was appointed or that she did not tell this to the complainant Ravindra. Nevertheless, as the corporation had appointed the brother of the deceased on compassionate ground in 1982, it would have been unusual and unfair to suddenly throw him on the streets and induct the complainant Ravindra in employment.

8. The Rules as regards compassionate appointments introduced by the corporation on 10.12.1979 indicate in clause 2 that if no one from the family of the deceased is eligible for compassionate appointment, a brother of the deceased can be appointed if the bereaved family is dependent upon him.

Clause (ii) of the said Rules reads as under :Â?

(ii) Only the wife or/ widow or/ son/ unmarried daughter of State Transport employees will be eligible to be considered for employment. If none of these relatives is in a position to serve, a brother of the State Transport employee, entirely dependent on him, may be considered for employment"".

9. Clause (iii) of the said Rules indicates that only one relative would be given the benefit of compassionate appointment. Clause (vi) defines the term family"", which includes wife or widow of the deceased employee, his sons, unmarried daughters and brothers, who are/ were entirely dependent on him.

10. In the light of the above, I do not find that the Industrial Court has rightly appreciated the facts of the case. It should have dealt with the aspect of the brother of the deceased being included as a family member and having been appointed on compassionate ground. The complainant Ravindra has shrewdly refrained from adding his uncle Anton Parande as a respondent since the Industrial Court would have been required to direct the termination of Anton Parande so as to make space for the complainant/ Ravindra to be appointed, assuming that the complainant/ Ravindra was entitled for seeking compassionate appointment. The Rules prescribed that only one relative could be appointed on compassionate basis.

11. Notwithstanding the above, even if it was assumed that the Industrial Court has delivered a sustainable judgment, the Honourable Supreme Court has held in Director, Defence Metal Research Laboratory and another vs. G. Murali, (2003) 9 SCC 24,7 that the passage of time would eliminate the purpose of compassionate appointment. Relevant observations made by the Honourable Supreme Court in paragraph 4 read as under :Â?

4. We do not find any flimsy ground or technicalities in the Tribunal's order. In fact, we find the High Court's order to be unsustainable. There has been a failure to appreciate what the Tribunal had rightly taken into account, namely, that the writ petitioner and his family had coped without the compassionate appointment for about eighteen years. There was no warrant in

such circumstances for directing the writ petitioner's appointment on compassionate grounds and that too with the direction to the respondents to the writ petition to create a post to accommodate him.

12. In a recent judgment in *State of Himachal Pradesh and another vs. Shashi Kumar*, (2019) 3 SCC 653, the Honourable Supreme Court has held

that a person is debarred from seeking compassionate appointment by the delay as well as by the lapse of time. The sense of immediacy is evidently

lost by the delay on the part of the dependant in seeking compassionate appointment.

13. The complainant Ravindra is about 45 years old today and it is 27 years ago that he became a major in 1992. His father has passed away 40 years

ago. Anton Parande has settled in employment for the last 37 years and must be nearing his superannuation.

14. Considering the above, this Writ Petition is allowed. The impugned judgment of the Industrial Court dated 23.09.2002 is quashed and set aside and

Complaint (ULP) No.320/1996 stands dismissed.

15. Rule is made absolute in the above terms.