

(2024) 05 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 667, 1565, 3701, 3964, 4918, 5294, 5945, 7300, 7321, 7484, 7628 Of 2022

Kalpana And Others

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 28-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2024) 05 BOM CK 0047

Hon'ble Judges : Anil S. Kilor, J; Anil L. Pansare, J; M.W.Chandwani, J

Bench : Full Bench

Advocate : Akshay M. Sudame, I.A. Fidvi, S.P.Bhandarkar, Sejal Lakhani, Rajnish Vyas, Sonali Saware-Gadhwe, Sapna Jadhav, Prashit Gawai, P. Raulkar, U.J. Deshpande, A.Y. Kapgate, A.H. Daga, G. G. Mishra, P.R. Agrawal, Abhay Sambre, S.S. Taram, A.W. Paunikar, N.S. Warulkar, V.D. Raut, S.A. Mohta, Kirti Deshpande, A.M. Dixit, M.K.Pathan, Amol Deshpande, Shilpa Giratkar

Final Decision : Allowed

Judgement

Anil S. Kilor, J

1. Heard.

2. A bunch of petitions, challenging clauses 3.11 and 3.21 of the Government Resolution, dated 21/09/2017 issued by the State of Maharashtra as regards its policy relating to the compassionate appointments, were listed before a Division Bench. (Coram: A.G. Gharote and M.S. Jawalkar, J.J.)

Clause 3.11 fixes the upper limits for such appointments as 45 years. It further contemplates deletion of name in the eventuality where the appointment is not made till the age of 45 years.

Clause 3.21 permits substitution of name of one of the legal heirs of a person wait-listed for compassionate appointment, if he/ she passes away before the appointment is made.

3. The Division Bench, on hearing the aforesaid bunch of petitions, formed an opinion that, the judgment of the Division Bench of this Court in the case of Dnyaneshwar S/o.Ramkishan Musane..vs.. State of Maharashtra and others, reported in 2020(5) Mh.L.J. 381, permitting substitution of name contrary to clause 3.21, does not consider the object of the policy in light of what has been held consistently in Umesh Kumar Nagpal ..vs.. State of Haryana, reported in (1994) 4 SCC 138, Nilima Raju Khapekar ..vs.. Executive Director, Bank of Baroda & Oth., reported in 2022(3) Mh.L.J. 441 and State of West Bengal ..vs.. Debabrata Tiwari, reported in AIR 2023 (SC) 1467. In the above-mentioned backdrop, on the Division Bench's request the matter is referred to answer the following questions:

(i) Considering the object of compassionate appointment, to provide immediate succour to the family of the deceased employee who dies in harness, as is spelt out in Umesh Kumar Nagpal (supra), Nilima Raju Khapekar (supra) and Debabrata Tiwari (supra), whether the view taken in Dnyaneshwar Musane (supra) and in other similar matters as indicated above would be correct?

(ii) Whether the policies of the State, which provide for creating a wait list of the candidates for compassionate appointment and in cases permits substitution, even on account of crossing a particular age limit of 45 years is contrary to the object and purpose for which a compassionate apportionment has to be granted?

4. It is manifest from the question No.(ii) that, it is in two parts namely:

(a) Whether the policy of the State, which provides for creating a list of candidates for compassionate appointment is contrary to the object and purpose for which a compassionate appointment has to be granted?

(b) Whether the policy of the State, which permits substitution even on account of crossing particular age limit of 45 years is contrary to the object and purpose for which a compassionate appointment has been granted?

5. We have heard the learned counsel for the respective parties.

6. Shri Akshaya Sudame, Shri S.P.Bhandarkar, Shri Rajnish Vyas, Ms. Sonali Saware-Gadhwe, Ms Sapna Jadhav, Shri Prashit Gawai, Shri U.J. Deshpande, Shri A.H. Daga, Shri P.R. Agrawal, Shri S.S.Taram, and Shri S.A. Mohta learned counsel made the following submissions:

a) Since the whole object of granting compassionate appointment is to enable the family to tide over the sudden financial crises, the substitution of name would not defeat the said purpose for the reason that, such substitution would not result in granting appointment to more than one family member of the deceased.

b) There is no period provided under the scheme framed by the State of Maharashtra, on expiry of which the family of the deceased would become disentitled to claim compassionate appointment. Hence, substitution even on the

ground of crossing the age limit of 45 years cannot be said to be contrary to the object and purpose of compassionate appointment.

c) The Division Bench of this Court has taken a just and proper view in the case of Dnyaneshwar Musane (supra), which was followed in many subsequent similar matters by this Court. It is submitted that in the said judgment the substitution is held to be permissible.

d) It is further submitted that, the wait list of the candidates eligible for appointment on compassionate ground, provides transparency and helps the aspirants to know their status as regards their claim. It is submitted that since there are pending applications for appointment on compassionate ground, the only mode known for such purpose is to maintain waiting list. It is therefore, submitted that maintaining waiting list is not contrary to the object and purpose of compassionate appointment.

7. On the other hand, the learned A.G.P. Shri Pathan submit as under:

a) The policy for compassionate appointment is based upon providing immediate succour to the legal heirs of the deceased on account of the emergency which has been created by the loss of the bread earner of the family and it is only for this emergent need that the concept of compassionate appointment was created. The said purpose would be frustrated if substitution is allowed.

b) That permitting substitution of the names in the wait list is contrary to the policy for which compassionate appointment was formulated.

c) Permitting substitution, amounts to continuing the entitlement in perpetuity which is against the very concept of compassionate appointment.

d) It is submitted that substitution destroys the very heart of the policy of compassionate appointment, as it creates hope in the mind of the legal heirs of the deceased employee which in some cases does not stand fructified for decades together if substitution is permitted. It is therefore, submitted that, permitting substitution is improper and contrary to the object of grant of compassionate appointment.

e) Under the scheme framed by the State of Maharashtra for compassionate appointment, the substitution is provided on a limited ground i.e. on the death of a member who applied for employment on compassionate ground, before his appointment. Thus, substitution on any other ground cannot be permitted as it is a settled law that, an employer cannot be compelled to make an appointment on compassionate ground, contrary to its policy.

f) If the substitution of the name of another member is allowed for the reason that, the member who applies for compassionate employment has attained the age of 45, the whole process will be extended for a long period till the appointment of another candidate, which is contrary to the object of the scheme for providing compassionate employment.

8. In light of rival submissions, we have perused the record, and gone through the relevant authorities on the subject involved in the present reference.

9. Before answering the questions referred to us, it would be appropriate and profitable to reiterate the law as regards the object and concept of compassionate appointment, which is as follows:

i) The purpose and object of compassionate appointment, has been discussed and expounded as far back as in 1994 by the Hon'ble Apex Court in the case of Umesh Kumar Nagpal (*supra*), in the following terms:

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made

in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

ii) In a recent decision in *State of West Bengal Vs. Debabrata Tiwari* (supra), the Hon'ble Apex Court reiterated the position 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. As noted above, the sine qua non for entertaining a claim for compassionate appointment is that the family of the deceased employee would be unable to make two ends meet without one of the dependants of the deceased employee being employed on compassionate grounds. The financial condition of the family of the deceased, at the time of the death of the deceased, is the primary consideration that ought to guide the authorities' decision in the matter.

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*: (AIR 1997 SC 3887) 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."

iii) The Full Bench of this Court after taking into considerations numerous authorities on this point, reiterated the position in the case of *Nilima Raju Khapekar* (supra) in the following terms:

"19. Before proceeding to decide the reference, we may remind ourselves of certain well-settled principles on the topic of appointment on compassionate ground, relevant for the present reference, which have crystallized through precedents into a rule of law. They are:

a) Appointment on compassionate ground, which is offered on humanitarian grounds, is an exception to the above rule of equality in the matter of public

employment, [see: General Manager, State Bank of India and ors. Vs. Anju Jain, reported in (2009) 2 Mh.LJ (S.C.) 41 : (2008) 8 SCC 475].

b) Compassionate appointment is ordinarily offered in two contingencies carved out as exceptions to the general rule, viz. to meet the sudden crisis occurring in a family either on account of death or of medical invalidation of the breadwinner while in service [see: V. Sivamurthy vs. Union of India, reported in (2008) 13 SCC 730].

c) The whole object of granting compassionate employment by an employer being intended to enable the family members of a deceased/ incapacitated employee to tide over the sudden financial crisis, appointments on compassionate ground should be made immediately to redeem the family in distress [see: Sushma Gosain vs. Union of India, reported in (1989) 4 SCC 468].

d) None can claim compassionate appointment by way of inheritance [see: State of Chattisgarh vs. Dhirjo Kumar Sengar, reported in 2009 Mh. L.J. Online (S.C.) 94: (2009) 13 SCC 600].

e) Compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirants [see: SAIL vs. Madhusudan Das, reported in (2008) 15 SCC 560].

f) None can claim compassionate appointment, on the occurrence of death/ medical incapacitation of the concerned employee (the sole bread earner of the family), as if it were a vested right, and any appointment without considering the financial condition of the family of the deceased is legally impermissible [see : Amrita Sinha (supra)].

g) Compassionate appointment cannot be made in the absence of rules or instructions [see : Haryana State Electricity Board vs. Krishna Devi, reported in (2002) 10 SCC 246].

h) An employer cannot be compelled to make an appointment on compassionate ground contrary to its policy [see : Kendriya Vidyalaya Sangathan vs. Dharmendra Sharma, reported in (2007) 8 SCC 148].

i) An application for compassionate appointment has to be made immediately upon death/incapacitation and in any case within a reasonable period thereof or else a presumption could be drawn that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. Such appointment not being a vested right, the right to apply cannot be exercised at any time in future and it cannot be offered whatever the lapse of time and after the crisis is over [see : Eastern Coalfields Ltd. vs. Anil Badyakar, reported in (2009) 13 SCC 112].

j) Offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Class III and IV is legally impermissible [Umesh Kumar Nagpal (supra)].

k) Indigence of the dependents of the deceased employee is the first precondition to bring the case under the scheme of 'compassionate appointment'. If the element of indigence and the need to provide immediate assistance for relief from financial destitution is taken away from compassionate appointment, it would turn out to be a reservation in favour of the dependents of the employee who died while in service which would directly be in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution [see : Union of India vs. B. Kishore, reported in 2011 Mh. L.J. Online (S.C.) 122 = (2011) 13 SCC 131].

1) The idea of compassionate appointment is not to provide for endless compassion [see : I.G. (Karmik) vs. Prahalad Mani Tripathi, reported in (2007) 6 SCC 162].

m) Satisfaction that the family members have been facing financial distress and that an appointment on compassionate ground may assist them to tide over such distress is not enough; a dependent must fulfil the eligibility criteria for appointment [see : State of Gujarat vs. Arvindkumar T. Tiwari, reported in (2013) 1 Mah LJ 555 (S.C.) : (2012) 9 SCC 545].

n) The object of compassionate employment is not to give a member of a family of the deceased employee a post much less a post for post held by the deceased [see : Umesh Kumar Nagpal (supra)].

o) There cannot be reservation of a vacancy till such time as the applicant becomes a major after a number of years, unless there are some specific provisions [see : Sanjay Kumar vs. State of Bihar, reported in (2000) 7 SCC 192].

p) It is only in rare cases and that too if provided by the scheme for compassionate appointment and not otherwise, that a dependent who was a minor on the date of death/incapacitation, can be considered for appointment upon attaining majority [see : M. Mahesh Kumar (supra)].

q) An appointment on compassionate ground made many years after the death/incapacitation of the employee or without due consideration of the financial resources available to the dependent of the deceased/incapacitated employee would be directly in conflict with Articles 14 and 16 of the Constitution [see : National Institute of Technology vs. Niraj Kumar Singh, reported in (2007) 2 SCC 481].

r) Dependents if gainfully employed cannot be considered [see : Haryana Public Service Commission vs. Harinder Singh and anr., reported in (1998) 5 SCC 452].

s) Courts cannot allow compassionate appointment dehors the statutory regulations/instructions. Hardship of the candidate does not entitle him to appointment dehors such regulations/ instructions [see : Jaspal Kaur (supra)].

t) Courts cannot confer benediction impelled by sympathetic consideration [see : Life Insurance Corporation of India v. Asha Ramchandra Ambekar, reported in

(1994) 2 SCC 718].”

10. It is thus, evident from the above cited authorities, that as a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. Neither the Government nor the Public Authorities are at liberty to follow any other procedure or relax the qualifications laid down by the Rules for the post. However, to the above referred General Rule, which is to be followed strictly in every case, there are some exceptions carved out. One such exception out of pure humanitarian consideration, is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. Considering the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment.

11. The exception to the Rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and a legitimate expectation, and a change in the status and affairs, of the family engendered by the erstwhile employment which is suddenly upturned.

12. Furthermore, from the above-referred authorities, the following principles emerge as regards the rationale behind a policy for compassionate appointment.

a) The whole object of granting compassionate employment is to enable the family to tide over the sudden crises.

b) Compassionate appointment is ordinarily offered in two contingencies viz. to meet the sudden crises occurring in a family either on account of death or medical invalidation of the breadwinner while in service.

c) No one can claim compassionate appointment by way of inheritance.

d) The mere death of an employee in harness does not entitle his family to such a source of livelihood. The Government or the Public Authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied that, but for the provision of employment, the family will not be able to meet the crises, that a job is to be offered to the eligible member of the family.

e) Compassionate appointment cannot be made in the absence of the Rules or instructions.

f) A dependent must fulfill the eligibility criteria laid down in the Rules for appointment.

g) The idea of compassionate appointment is not to provide for endless compassion.

h) Compassionate appointment is a concession and not a vested right.

i) An application for the compassionate appointment has to be made immediately upon death/incapacitation and in any case within a reasonable period thereof or

else a presumption could be drawn that the family of a deceased/incapacitated employee is not in immediate need of financial assistance.

j) An employer cannot be compelled to make an appointment on compassionate ground contrary to its policy.

k) An appointment on compassionate ground made many years after the death/incapacitation of an employee would be directly in conflict with Articles 14 and 16 of the Constitution of India.

13. From the above-referred principles, the rationale behind a policy for compassionate appointment and the consideration that ought to guide the determination of a claim for compassionate appointment is clear as crystal.

14. Let us now examine the policy of the State of Maharashtra as regards providing compassionate appointments.

15. The scheme for appointment on compassionate ground was first implemented by the Government of Maharashtra in the year 1976 with an object and purpose to provide succour to the deceased's family and to tide over the financial crises.

16. Thereafter, in supersession of earlier Rules, revised Rules were issued vide Government Resolution dated 26/10/1994.

17. Then, the Government decided to compile all the Government Resolutions and Circulars issued from time to time after 26/10/1994, in a single order to facilitate the authorities while taking action. Accordingly, the Government Resolution dated 21/09/2017 was issued.

18. Under the prevailing scheme for compassionate appointment, the relevant provisions for the purpose of deciding the questions referred, are as follows:

a) Appointment on compassionate ground is permissible only to one eligible legal heir of the deceased/incapacitated employee. Hence, submission of No Objection Certificate by other legal heirs, is necessary.

b) The period for making application is one year from the date of death of deceased employee and in the case of minor legal heirs, within one year of attaining the age of 18 years. The concerned Head of the Administrative Department is empowered to condone the delay up to two years after a lapse of the period of one year.

c) Unless all the requisite documents for appointment on compassionate ground are received, the name of the deceased's legal heirs shall not be included in the waiting list.

d) The minimum age limit for appointment is 18 years and the maximum is 45 years.

e) Substitution of name in the waiting list is prohibited on any ground except

where the candidate in the waiting list dies before the appointment is made.

19. After examining the relevant provisions of the scheme let us dwell upon the question No.(i) Considering the object of compassionate appointment as spelt out in Umesh Kumar Nagpal (supra), Nilima Raju Khapekar (supra) and Debabrata Tiwari (supra), whether the view taken by the Division Bench of this Court in Dnyaneshwar Musane (supra) and in other similar matters would be correct.?

20. In view of the above-referred question, at this juncture, it would be appropriate and relevant to refer to the observations made by the Division Bench of this Court in the case of Dnyaneshwar Musane

(supra), which read thus:

"5. After hearing learned advocates for the parties and going through the Government Resolution dated 20-5-2015, we are of the view that the prohibition imposed by the Government Resolution dated 20-5-2015 that name of any legal representative of deceased employee would not be substituted by any other legal representative seeking appointment on compassionate ground, is arbitrary, irrational and unreasonable and violates the fundamental rights guaranteed by Article 14 of the Constitution of India. As the per the policy of the State Government, one legal representative of deceased employee is entitled to be considered for appointment on compassionate ground. The prohibition imposed by the Government Resolution dated 20-5-2015 that if one legal representative of deceased employee stakes claim for appointment on compassionate ground, then name of another legal representative of that deceased employee cannot be substituted in the list in place of the other legal representative who had submitted his/her application earlier, does not further the object of the policy of the State Government regarding appointments on compassionate grounds. On the contrary, such prohibition frustrates the object for which the policy to give appointments on compassionate grounds is formulated. It is not the case of respondent No. 2 that petitioner's mother was given appointment on compassionate ground and then she resigned and proposed that petitioner should be given appointment. The name of petitioner's mother was in waiting list when she gave up her claim and proposed that the petitioner should be considered for appointment on compassionate ground."

21. Thus, the Division Bench of this Court in the case of Dnyaneshwar Musane (Supra), has held that the prohibition imposed to the effect that, if one legal representative of the deceased employee stakes claim for appointment on compassionate ground then the name of another legal representative cannot be substituted in the list does not further the object of the policy of the State Government regarding appointments on compassionate ground. It is further held that, on the contrary, such prohibition frustrates the object for which the policy to give appointment on compassionate ground is formulated.

22. In the above-referred backdrop, if we see the meaning of the word

'substitution', it would mean 'to replace with another' or 'one who stands in another's place' or 'the process by which one person takes the place of another person'.

23. Thus, it is evident that, if a family member of the deceased/incapacitated employee applies for substitution of his name with another family member, it cannot be treated as a fresh application or subsequent application or it cannot be implied that more than one member is seeking compassionate appointment.

24. The scheme permits compassionate appointment to one eligible legal heir of the deceased/incapacitated employee with an object to enable the family to tide over the sudden financial crisis. In the circumstances, if substitution is permitted, it would amount to replacement of name by another name. As substitution does not amount to making of a fresh application or staking a claim by more than one legal heir of the deceased, it cannot be said that substitution would run counter to the purpose and object of compassionate appointment.

25. From the purpose and object of the compassionate appointment, it is evident that, some source of livelihood is to be provided to any one member of the family to make both ends meet. In case of substitution, the name of another member would be substituted in the wait list in place of earlier member. In that eventuality also the employment will be provided to only one member, as per policy. Therefore, it cannot be said that, substitution would defeat the object of compassionate appointment.

26. Furthermore, keeping in mind the object and purpose of the appointment on compassionate ground, that is to provide succour to the family, it does not matter whether the employment is provided to X member of the family or Y member of the family as long as the scheme permits to provide employment to any one member of the family. If the substitution is permitted, the only change which will occur is that the name of 'X' will be replaced by 'Y' member and nothing beyond that.

27. It is for the family to decide which member of the family should seek the employment on behalf of the family. Therefore, a rigid approach to not allow any substitution to take place is not an appropriate measure of providing succour and help to the family of the deceased government servant, which is the very object and rationale behind the scheme.

28. If the application submitted by one of the family members has already resulted in an order of appointment in favour of such an applicant, at that stage, substitution may not be permitted or entertained. However, where the application seeking appointment on compassionate basis is still pending consideration and if any application for substitution of name in place of the former one is rejected, it would amount to denial of appointment on compassionate ground contrary to the policy.

29. Another important aspect would be, permitting substitution after a lapse of

long period. No doubt, in providing a compassionate appointment where a long period is lapsed and no appointment is made since the date of death of the deceased employee, the sense of immediacy would cease to exist and purpose of compassionate appointment loses its significance.

30. However, cessation of the sense of immediacy or losing the significance of providing compassionate appointment because of delay is distinct and separate from the act of allowing substitution of name.

31. The delay or lapse of a long time in providing a compassionate appointment may make the claim for appointment or substitution of name inconsiderable or nugatory but it would be only in case where a period is specified in the policy to disentitle the family of deceased employee, if the appointment is not made or the substitution is not sought before the expiry of such specified period. Thus, unless such a period is specified in the policy, denial to substitute the name on the ground of delay would amount to denial of appointment on compassionate ground contrary to the policy.

32. It is pertinent to note that, there is no provision in the scheme formulated by the State of Maharashtra, making the family disentitled to claim a compassionate appointment if the appointment is not made in a specified period. In other words there is no provision in the scheme to make the family disentitled because of cessation of immediacy due to lapse of a specified period.

33. It is to be noted that, the Hon'ble Supreme Court of India in the case of Debabrata Tiwari (supra) has held that 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. Despite this, no provision is made by the government, specifying the period within which if the appointment is not made, such claim would be inconsiderable, worthless or nugatory on the ground of delay in making appointment.

34. The only provision as on this date to remove the name from the waiting list is upon attainment of the age of 45 years by the person waitlisted.

35. While talking about cessation of immediacy or delay it is important to note that, one year period is provided for making an application for appointment from the date of death of the deceased employee. Whereas, the provision for condonation of delay up to 2 years makes it permissible to apply within three years if the delay is condoned.

36. In this background now let us get the perspective of this matter looking at the ground realities of today's life. The upper age to seek employment under State of Maharashtra is 40 years for the open category and 45 years for the reserved category. The average age of marriage in the state of Maharashtra is 28 to 30 years. Thus, it is a possibility that, an employee dies in harness between the age of 45 to 47 years and his widow is aged more than 42 years and less

than 45 years on the date of death of the employee. Resultantly, She applies for compassionate appointment since her son/daughter is below 18 years of age and not eligible for seeking employment. In that event if no appointment is made immediately before she attains age of 45 years, her name will be deleted within a period of three years on the ground that she has attained the age of 45 years. The consequences of it would be harsh i.e. in less than the maximum period of three years provided for making application for appointment including the period of condonation of delay, the family would be disentitled to claim appointment if substitution is not permitted. Therefore, denial to substitute the name of another member of the family only because substitution is sought on the ground that the member waitlisted has attained age of 45 years cannot be said to be justifiable in such or similar matters.

37. On the other hand, in a case where the applicant applied immediately on attaining age of 18 years and if he does not get employment till the age of 45 years, his name would still continue to be in the waiting list for 27 years.

38. In another situation, where the applicant was a minor on the date of death of the deceased employee and he/she makes an application on attainment of age of 18 years for appointment within prescribed period of one year, his/her name would continue till he/she attains age of 45 years, if no appointment is made. In such matter if the period lapsed before attaining the age of 18 years is added into the period spent in making applications on attaining age of 18 years, with the subsequent period of 27 years i.e. till the age of 45 years if the appointment is not made, the total period would be much more than 28 years from the date of death of the employee. Thus, lapse of long time in making appointment on compassionate ground and allowing substitution of name are two separate and distinct things and both cannot be intermingled to deny substitution.

39. It is argued by the State that, if substitution is allowed on the ground that the person waitlisted has attained age of 45, the whole process will be extended for a long period till the appointment of another candidate which is contrary to the object of the scheme for providing compassionate appointment. However, exactly contrary to this the State of Maharashtra acted and resolved vide, Government resolution dated 21 September 2017, to clear all the names pending in the waiting list as on 22 August 2005, within three years by giving appointments to 50% candidates in the first year, 25% in the second year and remaining 25% in the third year. Thus, the appointments in these cases were made after more than 15 years of entering the names in the waiting list.

40. Similarly, as the substitution in case of death of a waitlisted member is permitted under the State's policy, resultantly the name of such substituted member will continue for long period in the waiting list. However, at the same time, substitution of name on any other ground is being opposed by citing a justification that, contrary to the object of the compassionate appointment the name of a substituted member would be continued for long period. Thus, it is evident that, the State has applied two different criteria for similarly

circumstanced persons in the matter of compassionate appointments, which amounts to treating equals unequally in violation of Article 14 of the Constitution of India.

41. It may be noted there may be a number of reasons justifying the request for substitution of name in consonance with the object of compassionate employment. Though, it is difficult to anticipate every such situation, few are stated hereunder as illustrations:

i) The widow of the employee, aged 41 years or more applies with an expectation that before she attains age of 45 years, she would get employment. However, because of delay in appointment, her son/daughter attains the minimum age of 18 years

ii) If the member who is beyond 18 years of age and is pursuing his studies, applies for appointment but because no appointment is made immediately he may have reached a particular stage in his academic career where pursuing further academic course is far more important for future prospects and consequently, the family members instead of him, seek employment in favour of any other member of the family.

iii) On making an application by one of the members of the family and before the appointment is made, family realizes that for certain reasons another member is more appropriate and suitable for an appointment.

iv) On making the application such member of the family becomes incapacitated physically or medically.

v) The widow of the deceased employee applies as the son/daughter is a minor. But, before the appointment is made, the son/daughter attains age of 18 years and the family takes a decision that it would be more appropriate to seek employment for the son/daughter.

42. In any of the above eventuality denial to substitute the name amounts to denial to grant compassionate appointment contrary to the scheme.

43. At this juncture, it needs to be appreciated that, compassion is the feeling that arises in witnessing another's suffering and that motivates a desire to help and of alleviation of suffering. Hence, one cannot be permitted to act indifferently and unconcerned in the matter of compassionate appointment.

44. However, in the matters where it took a long time for the claimants to reach at the top of the waiting list to become due for appointment, the claims may be denied in view of observation made in the case of Debabrata Tiwari (Supra). But, denial of substitution of name on the said ground cannot be permitted. The proper stage in each individual case to find out whether the candidate fulfills the eligibility criteria as prescribed under the scheme or whether the claim has lost its significance because of long lapse of time, is the stage before issuance of order of appointment and not when the substitution is sought.

45. Having held so we answer the question No.1 in negative and it is held that the view taken in the case of Dnyaneshwar Musane (supra) by the Division Bench of this Court and other similar matters, is correct and is in consonance with the object of compassionate appointment spelt out in Umesh Kumar Nagpal (supra), Nilima Raju Khapekar (supra) and Debabrata Tiwari (supra) .

46. Further, we answer Question No.2(b) negative and it is held that seeking substitution of the name of another member in place of a member who has applied, on account of crossing the age limit of 45 years is not contrary to the object and purpose for which compassionate appointment must be granted.

47. Moving to the Question 2(a) regarding the waiting list. In service matters waiting list is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. Usually, it is linked with the selection or examination for which it is prepared. Such lists are prepared to ensure that functioning of the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. Moreover, such list has a fixed life therefore, it lapses after such fixed period.

48. However, the purpose of the waiting list in relation to compassionate appointments is different than the purpose stated herein above. The waiting list in the matter of compassionate appointment is nothing but a list of aspirants who are in line, which is maintained on the basis of the date of application. Moreover, such list doesn't have any fixed life after which it would lapse. Such list infact provides transparency in the process of appointment and helps the aspirants to know their status as regards the appointment. Therefore, it would help to eliminate any possibility of arbitrariness in appointments, particularly when such appointments take long time to come into being for the reason that such appointments are permissible only on a fixed percentage of posts of total vacancy.

49. It is a settled law that compassionate appointment is a concession and not a vested right. It is also a settled law that the idea of compassionate appointment is not to provide for endless compassion. Moreover, in the G.R. dated 21/09/2017 it is specifically stated that compassionate appointment cannot be claimed by way of inheritance. Therefore, it cannot be said that it would add insult to the injury if such a person who has been waitlisted continues to be so waitlisted for decades together and the policy of substitution of such a waitlisted person is permitted.

50. In the circumstances, we do not find that the policy framed for wait listing would be contrary to the very object and purpose of the compassionate appointment. We have answered the Question No.2(a) accordingly.

51. In these circumstances and in the light of above discussion, we answer the reference as under :

Sr. No

Questions

Answer

(i)

Considering the object of compassionate appointment, to provide immediate succour to the family of the deceased employee who dies in harness, as is spelt out in Umesh Kumar Nagpal (supra), Nilima Raju Khapekar (supra) and Debabrata Tiwari (supra) whether the view taken in Dnyaneshwar Musane and other similar matters as indicated above would be correct ?

The view taken in the case of Dnyaneshwar Musane (supra) by the Division Bench of this Court and other similar matters, is correct and is in consonance with the object of compassionate appointment spelt out in Umesh Kumar Nagpal (supra), Nilima Raju Khapekar (supra) and Debabrata Tiwari (supra)

(ii)

Whether the policies of the State, which provide for creating a wait list of the candidates for compassionate appointment and in cases permits substitution, even on account of crossing a particular age limit of 45 years is contrary to the object and purpose for which a compassionate appointment has to be granted?

a) Maintaining a wait list of the candidates for compassionate appointment is not contrary to the object and purpose for which a compassionate appointment has to be granted.

b) Seeking substitution of the name of another member in place of a member who has applied, on account of crossing the age limit of 45 years is not contrary to the object and purpose for which compassionate appointment must be granted.

52. Having answered the questions of law, as formulated by the Division Bench for reference, now we direct the matter to be placed before the Division Bench for disposal in accordance with the law. Keeping in view the importance of the questions involved in the present case, we leave the parties to bear their own costs.

53. Considering the intricacies of the questions referred to us, we place on record our appreciation for all the learned counsel, who have addressed us on this issue and have rendered fruitful assistance to us, which has helped us in answering the questions.