
(2016) 07 BOM CK 0025
In the Bombay High Court
Case No : Writ Petition No. 11235 of 2015

Ku. Seema Hiralal Pawar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-07-2016

Acts Referred:

Citation : (2016) 4 ALLMR 894 : (2016) 6 BCR 824 : (2016) 5 MhLJ 341

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. V.G. Salgare, Advocate, for the Appellant; Mr. A.G. Magre, A.G.P, Mr. Zareef Khan Pathan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sangitrao S. Patil, J.—Rule. Rule made returnable forthwith. With consent of learned counsel for the parties, heard finally.

2. The petitioner has taken exception to the order dated 7th October, 2015, passed by respondent No. 2 whereby her claim for appointment on compassionate ground has been rejected.

3. The father of the petitioner, namely, Hiralal Malanbai Pawar was serving as an Assistant Teacher at Bazar Savangi, Taluka Khultabad, District Aurangabad in the Primary School, run by respondent No. 2. He died in harness on 24th June, 1998. The petitioner is the daughter of deceased Hiralal. She submitted an application before respondent No. 2 for her appointment on compassionate ground on 13th July, 2015. The said application came to be rejected by respondent No. 2 as per the impugned order on the ground that the said application has not been filed within a period of one year from the date of death of her father i.e. deceased Hiralal.

4. The learned counsel for the petitioner submits that per the Government Resolution dated 20th May, 2015, it was incumbent upon respondent No. 3 to apprise the family members of the deceased Hiralal about the scheme for

appointment on compassionate ground. No such information was given to the petitioner. Therefore, there has been delay on her part in submitting the application for her appointment on compassionate ground. Relying on the judgment in the case of Bigan Manjhi v. The Central Coalfields Limited and others 2016 (1) JBCJ 369, he submits that the delay in submitting the application by the petitioner for her appointment on compassionate ground may be ordered to be condoned. He further relied on the judgment in the case of Balbir Kaur v. Steel Authority of India Ltd. 2000 (2) CLR 631, wherein it has been held that an authority of State under Article 12 of the Constitution is obliged to act in terms of avowed objective of social and economic justice as enshrined in the Constitution like a model and ideal employer in the matter of appointment on compassionate ground. He, therefore, prays that the impugned order may be quashed and set aside and respondent No. 2 may be directed to issue order of appointment of the petitioner on compassionate ground, as per the Government Resolutions dated 23rd August, 1996 and 20th May, 2015.

5. As against this, respondent No. 2 filed affidavit-in-reply for himself and on behalf of respondent No. 3 and denied the claim of the petitioner for her appointment on compassionate ground on the sole count that there has been inordinate delay in submitting the application for such appointment by the petitioner. The learned counsel for respondent Nos. 2 and 3 relying on the contents of the said reply, prays for dismissal of the writ petition.

6. As per the Government Resolution dated 23rd August, 1996, the revised scheme for appointment on compassionate ground of the deceased Government servant was introduced. In Clause 6 of the said Government Resolution, there is mention that the Establishment Officer should apprise the family members of the deceased Government servant about the scheme for appointment on compassionate ground within fifteen days of the death of such Government servant or at the time of sending his/her papers for family pension.

7. As per the Government Resolution dated 26th October, 1994, the application for appointment on compassionate ground was required to be made within a period of five years from the date of death of the Government servant. The Government Resolution dated 11th September, 1996 contains that in case the eligible dependent of the Government servant happens to be a minor at the time of his death, such minor dependent may apply for appointment on compassionate ground within a period of one year of attaining the age of majority. In clause (d) of the Government Resolution dated 20th May, 2015, the Head of the Administrative Department is empowered to condone the delay upto two years after one year of attaining the age of majority by the dependent of the deceased Government servant (i.e. upto three years from the date of attaining majority).

8. From the above provisions of the Government Resolutions dated 23rd August, 1996 and 20th May, 2015, it is clear that it is incumbent on the part of the Establishment Officer to inform the family members of the deceased Government

servant within fifteen days of his death about the scheme for appointment on compassionate ground as also about the provision for making such application by a minor dependent within one year of his/her attaining the age of majority.

9. The learned counsel for the petitioner submits that no such information was given by respondent Nos. 2 and 3 to the family members of deceased Hiralal. Respondent No. 2 has denied in paragraph of the reply that it was incumbent on the part of respondent Nos. 2 and 3 to appraise the family members of deceased Hiralal about the scheme of appointment on compassionate ground as well as about the entitlement of the minor dependent of deceased Hiralal to apply for such appointment within one year after attaining the age of majority. It is strange to note that a responsible officer like the Chief Executive Officer of the Zilla Parishad denies the contents of clause (6) of the Government Resolution dated 23rd August, 1996 and clause (1) (b) of the Government Resolution dated 20th May, 2015, which speak in unequivocal terms about the responsibility of the Establishment Officer to apprise the family members of the deceased Government servant about the scheme for appointment on compassionate ground as also about the entitlement of the minor dependent of the deceased Government servant to apply for such appointment within one year of attaining the age of majority. Albeit, the disputed question of fact about having informed the family members of deceased Hiralal about the scheme for appointment on compassionate ground cannot be considered by this Court in writ jurisdiction, more particularly when it is not even mentioned by the petitioner in her application dated 13th July, 2015 that for want of knowledge about the scheme for appointment on compassionate ground, she could not make application within one year of her attaining the age of majority. There is absolutely no reason given by the petitioner for the delay in making such an application.

10. The date of birth of the petitioner is 15th May, 1991. She attained the age of majority on 14th May, 2009. The petitioner submitted the application for her appointment on compassionate ground on 13th July, 2015 i.e. after about six years and two months of her attaining the age of majority. Undisputedly, the father of the petitioner died on 24th June, 1998. It is well settled that the object of granting compassionate appointment is to enable the family members of the deceased Government servant to tide over the sudden crisis and to relieve it from financial destitution due to untimely death of their bread winner. The compassionate appointment cannot be granted after a lapse of reasonable period. It is not a vested right which can be exercised at any time in future. An application for compassionate employment must be preferred without undue delay. The present petitioner is claiming appointment on compassionate ground after about 17 years of the death of her father. Moreover, she did not make the application for such appointment within one year of her attaining the age of majority. The delay of more than six years in making an application for such appointment after her attaining the age of majority, has remained unexplained. In the circumstances, respondent No. 2 cannot be said to have committed any mistake in rejecting the application of the petitioner for appointment on

compassionate ground.

11. Considering the distinguishable facts in the case of Bigan Manjhi (supra), which do not disclose as to what was the exact delay on the part of the appellant therein in claiming the appointment on compassionate ground, the direction given in that judgment for reconsideration of the claim of the appellant therein sympathetically would be of no help to the petitioner herein.

12. In the case of Balbir Kaur (supra), the question for determination before the Hon"ble Apex Court was the interpretation of Family Benefit Scheme as introduced in NJSC Tripartite Agreement of 1989 and the consequences thereof on the existing welfare measure as contained in NJSC Agreement in 1983. The learned counsel for the petitioner in the present case could not show as to how the said judgment would advance the case of the petitioner.

13. In the above circumstances, we are of the considered view that the petitioner is not entitled to claim appointment on compassionate ground after about 17 years of the death of her father and particularly after about six years of her attaining the age of majority. We are, therefore, not inclined to grant the relief sought for by the petitioner. The petition is liable to be dismissed.

14. In the result, we pass the following order.

(i) The writ petition is dismissed.

(ii) Rule stands discharged accordingly.

(iii) The writ petition is disposed of. No costs.