

(2015) 08 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No. 4750 of 2012

Mahatma Phule Krushi Vidyapeeth

APPELLANT

Vs

Ahmednagar Zilla Shetmajoor Union

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2016) 1 ABR 142 : (2016) 2 ALLMR 337 : (2015) 4 LLJ 34

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : A.S. Shelke, for the Appellant; H.U. Dhage, Advocates for the Respondent

Final Decision : Allowed

Judgement

R.V. Ghuge, J—Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. I have considered the submissions of the learned Advocates for the respective sides in extenso on 29/06/2015 and 11/08/2015. Both the learned Advocates today have placed reliance upon reported judgments.

3. Considering the submissions of the learned Advocates and the record before the Court, the following aspects are undisputed :-

- a. Punja Thorat was a daily wager who died on 26.12.1992.
- b. Pandharinath Mane was a daily wager who died on 07.09.1996.
- c. Nanasaheb Punja Thorat is born on 01.06.1968.
- d. Vitthal Pandharinath Mane is born on 01.06.1974.
- e. Both these persons were 24 years and 22 years old respectively when their fathers passed away.

f. Nanasaheb and Vitthal filed the applications seeking appointment on compassionate basis on 15.07.2004 and 16.07.2004, which is about 12 years and 08 years after the demise of their fathers.

g. The Government Resolution dated 26.10.1994 which is later on modified, mandated an eligible candidate to apply for compassionate appointment within five years from the date of death of his parent or retirement from employment due to medical reasons.

4. Mr. Dhage had pointed out a list of applicants for compassionate appointment through the rejoinder of the respondent. A case was located by way of an illustration at Sr.No.132, wherein the father of the applicant candidate had two wives. Both of them were working with the petitioner University. One amongst them namely Indubai passed away and the second wife continued in employment. Yet the person at Sr.No.132 was stated to be in the wait list for compassionate appointment as a legal heir of deceased Indubai.

5. Mr. Shelke has, on the basis of the record, indicated that the son of the deceased Indubai was not in the wait list. The illustration at Sr.No. 132 was a list indicating the persons who had applied for compassionate appointment. He states on instructions that the said candidate at Sr.No.132 was not included in the wait list of candidates for compassionate appointments.

6. The respondents herein preferred Complaint (ULP) No. 91/2004 before the Industrial Court, Ahmednagar praying for appointment on compassionate basis. The respondent Union had espoused the cause of the two persons before the Industrial Court who are Nanasaheb Punja Thorat and Vitthal Pandharinath Mane. By the impugned judgment and order dated 03/02/2012, Complaint (ULP) no.91/2004 was allowed, the petitioner was held guilty of having committed unfair labour practices in rejecting the applications of these two persons and the petitioner was directed to include the names of Nanasaheb Punja and Vitthal Pandharinath in the waiting list for appointment on compassionate basis.

7. Mr. Shelke strenuously submits that a daily wager is not covered by the scheme for compassionate appointments. Unless the deceased employee was a permanent employee, his legal heir cannot be considered for compassionate appointment. He specifically submits on the basis of the stand taken before the Industrial Court that the scheme for compassionate appointments does not cover daily wagers or employees appointed on ad-hoc basis.

8. Mr. Shelke submits that the conclusions of the Industrial Court are against the very policy of the petitioner / Agricultural University. When a daily wage employee passes away while being engaged as a daily wager, it would not have granted the right to his legal heirs to claim compassionate appointment.

9. He submits that the GR dated 26/10/1994 cannot be interpreted to include legal heirs of daily wagers or temporary employees in the list of eligible candidates for compassionate appointment. The Industrial Court had relied upon

a judgment of the Allahabad High Court and the U.P. Government Servants (Dying in Harness) Rules, 1974 while appreciating the claim put forth by the respondent/Union.

10. He, therefore, submits that the Industrial Court should have considered the factual background in which the applications of Nanasaheb Punja and Vitthal Pandharinath were rejected. However, the Industrial Court considered the aspect of these two persons being legal heirs of the deceased daily wagers and hence directed their inclusion in the waiting list.

11. Mr. Dhage, learned Advocate has placed heavy reliance upon the Government Resolution dated 26/10/1994 on the basis of which the Industrial Court has allowed the complaint. He submits that there is no exclusion clause in the said GR by which daily wagers / temporaries / ad-hoc employees, if pass away in such employment, their legal heirs would not be entitled for compassionate appointment.

12. He further submits that the Industrial Court has rightly considered the GR, the evidence on record and has concluded that the applications filed by the two employees should have been allowed by the petitioner. He, therefore, submits that no interference is called for in the impugned judgment.

13. I find from the said GR dated 26/10/1994 that if employees are in permanent service, in permanent establishment as well as the temporary establishment (CRTE), it would entitle their legal heirs for compassionate appointment. In this background, clause 5-A mandates that the legal heir should apply for compassionate appointment within 5 years from the demise of his parent. It is informed that presently this condition has been modified and an application for compassionate appointment is required to be made within one year from the date of the demise of the parent.

14. Punja Thorat, a daily wager and father of Nanasaheb passed away on 26/12/1992. Nanasaheb Punja was born on 01/06/1968. He was, therefore, 24 years old when his father passed away. Pandharinath Mane, a daily wager and father of Vitthal passed away on 07/09/1996. Vitthal Pandharinath was born on 01/06/1974 and was 22 years old when his father passed away. Nanasaheb and Vitthal filed applications seeking appointment on compassionate basis on 15/07/2004 and 16/07/2004 which is about 12 years and 8 years after the demise of their fathers respectively. On this ground alone, the rejection of their applications by the petitioner could not have been faulted by the Industrial Court.

15. The Apex Court, in the matter of State of Haryana and Others Vs. Rani Devi and Another, AIR 1996 SC 2445 : (1996) 74 FLR 2023 : (1996) 5 SCALE 338 : (1996) 5 SCC 308 : (1996) 3 SCR 560 Supp has dealt with a case of legal heirs of daily wagers / ad-hoc employees claiming compassionate appointment. It would be apposite to reproduce paragraph Nos. 6 and 7 of the said judgment hereinbelow.

"6. It need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the ground that he was a dependant on the deceased employee. Strictly this claim cannot be upheld on the touch stone of Articles 14 or 16 of the Constitution. But this Court has upheld this claim as reasonable and permissible on employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16.

7. So far the facts of the present case are concerned, we fail to appreciate as to how the High Court directed that the respondents aforesaid be appointed on compassionate ground when admittedly the respective husbands of the respondents were working as Apprentice Canal Patwaris for the periods mentioned above. If the scheme regarding appointment on compassionate ground is extended to all sorts of casual, ad-hoc employees including those who are working as Apprentices, then such scheme cannot be justified on constitutional grounds. It need not be pointed out that appointments on compassionate grounds, are made as a matter, of course, without even requiring the person concerned to face any Selection Committee. In the case of Umesh Kumar Nagpal vs. State of Haryana & Ors. (supra) it was said:

"It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Class III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity."

16. In similar set of facts, the Apex Court in the matter of MGB Gramin Bank Vs. Chakrawarti Singh, (2013) 9 AD 253 : AIR 2013 SC 3365 : (2013) 139 FLR 469 : (2013) LabIC 3824 : (2013) 10 SCALE 223 : (2013) 4 SCT 541 : (2013) 114 SLJ 328 : (2013) AIRSCW 4801 has concluded in paragraph Nos. 11 to 14 as under :-

"11. In Webster's Comprehensive Dictionary (International Edition) at page 1397, "'vested'" is defined as Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest. (Vide: Videsh Sanchar Nigam Ltd. Vs. M.V. Kapitan Kud and others, AIR 1996 SC 516 : AIR 1995 SC 516 : (1995) 8 JT 166 : (1995) 6 SCALE 339 : (1996) 7 SCC 127 : (1995) 5 SCR 76 Supp ; and J.S. Yadav Vs. State of U.P. and Another, (2011) 3 CTC 532 : (2011) 4 SCALE 733 : (2011) 6 SCC 570 : (2011) 2 SCC(L&S) 140 : (2011) 5 SCR 460 : (2011) 2 UJ 1625 : (2011) AIRSCW 3078 : (2011) 4 Supreme 546

Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has

been derived by a party, the policy decision/ scheme could be changed. (Vide: Kuldeep Singh Vs. Govt. of NCT of Delhi, AIR 2006 SC 2652 : (2006) 6 JT 199 : (2006) 6 SCALE 588 : (2006) 5 SCC 702 : (2006) 3 SCR 335 Supp : (2006) AIRSCW 3627 : (2006) 5 Supreme 742

12. A scheme containing an in pari materia clause, as is involved in this case was considered by this Court in State Bank of India and Another Vs. Raj Kumar, (2010) 11 SCC 661 : (2011) 1 SCC(L&S) 150 . Clause 14 of the said Scheme is verbatim to clause 14 of the scheme involved herein, which reads as under:

"14. Date of effect of the scheme and disposal of pending applications:

The Scheme will come into force with effect from the date it is approved by the Board of Directors. Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Board will be dealt with in accordance with Scheme for payment of ex-gratia lump sum amount provided they fulfill all the terms and conditions of this scheme."

13. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr. (supra), this Court held that in such a situation, the case under the new Scheme has to be considered.

14. In view of the above position, the reasoning given by the learned Single Judge as well as by the Division Bench is not sustainable in the eyes of law. The appeal is allowed and the impugned judgments of the High Court are set aside."

17. In the light of the above, it is evident that unless the rules specifically prescribed, legal heirs of daily wagers / ad-hoc employees / temporaries would not be entitled for seeking compassionate appointment.

18. Mr. Dhage has placed reliance upon the judgment of this Court in the case of Udgir Municipal Council Vs. The State of Maharashtra and others, decided on 03/03/2015, WP No. 5507/2014, to contend that the legal heir of a Safai Kamgar was held entitled for compassionate appointment in Complaint (ULP) No. 123/2012 and which judgment of the Industrial Court has not been interfered with by this Court.

19. I do not find that the said judgment is of any assistance to the respondent for the reason that the father of the claimant in the said case was a permanent employee of Udgir Municipal Council, as is recorded by this Court in paragraph No. 3 of the said judgment. The facts of the said case are therefore distinguishable.

20. In the light of the above, I find that the Industrial Court has passed the impugned order out of sympathy towards the said two applicants. The impugned judgment and order is unsustainable in the light of the rules applicable to compassionate appointment with the petitioner and in the light of the judgment of the Apex Court in the case of State of Haryana (supra) and MGB Gramin Bank (supra).

21. This petition is, therefore, allowed. The impugned judgment and order dated 03/02/2012 delivered by the Industrial Court is quashed and set aside. Complaint ULP No. 91/2004 stands dismissed.