

(2002) 09 BOM CK 0096
In the Bombay High Court
Case No : Writ Petition No. 171 of 1993

Mohasin Ali Muneer Ali Sayyed	Vs	APPELLANT
Chief Executive Officer, Zilla Parishad		RESPONDENT

Date of Decision : 17-09-2002

Acts Referred:

Constitution of India, 1950 — Article 16(3), 16(5), 226

Citation : (2003) 2 BomCR 760

Hon'ble Judges : V.M. Kanade, J;R.K. Batta, J

Bench : Division Bench

Advocate : A.P. Mamdalwar, for the Appellant; M.V. Mohokar, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—The petitioner has filed this petition under Articles 226 and 227 of the Constitution of India and is seeking in appropriate writ or order to direct the respondent to provide suitable job to the petitioner on compassionate ground.

2. The petitioner's father was in the employment of respondent as Clerk-cum-Cashier for about 10 to 11 years in Class-III category. He died while he was in employment on 13-6-1975. The petitioner, at that time, was nine years old. The petitioner, after attaining the age of majority, submitted representation to the respondent requesting it to provide him a suitable job. It is the case of the petitioner that his application/representation was rejected by the respondent on the ground that this application was not made within five years after his father expired and is, therefore, the same cannot be considered. The said representation of the petitioner was rejected by communication dated 19-8-1987. The petitioner has filed this petition in the year 1993. At the time of filing of the petition, the petitioner was 26 years old.

3. The Government of Maharashtra, by its resolution dated 8th March, 1985 has laid down guidelines in respect of appointment of heirs of deceased employees. In the said resolution, it has been specified that ordinarily an application should

be made by the relative within one year from the death of the employees. If at that time the relative does not acquire educational qualification in that event the application is to be made within three years. An outer limit has been provided in the said Government Resolution and it is made clear that no application will be entertained after the expiry of five years from the death of the employee.

4. In the present case, the petitioner has made a representation in the year 1985 which is almost after a lapse of ten years after the death of his father. His application was rejected in the year 1987 and thereafter almost after a lapse of another seven years, he has filed the present petition.

5. The Apex Court in Auditor General of India and others Vs. G. Ananta Rajeswara Rao, , has made the following observations in para 5 :-

"A reading of these various clauses in the memorandum discloses that the appointment on compassionate grounds would not only be to a son, daughter or widow but also to a near relative which was vague or undefined. A person who dies in harness and whose members of the family need immediate relief of providing appointment to relieve economic distress from the loss of the bread winner of the family need compassionate treatment. But all possible eventualities have been enumerated to become a rule to avoid regular recruitment. It would appear that these enumerated eventualities would be breeding ground for misuse of appointments by compassionate grounds. Article 16(3) to 16(5) provided exceptions. Further exception must be on constitutionally valid and permissible grounds. Therefore, the High Court is right in holding that the appointment on grounds of descent clearly violates Article 16(2) of the Constitution. But, however, it is made clear that if the appointments are confined to the son/ daughter or widow of the deceased Government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread winner to relieve the economic distress of the members of the family, it is unexceptionable. But in other cases it cannot be a rule to take advantage of the memorandum to appoint the persons to these posts on the ground of compassion. Accordingly, we allow the appeal in part and hold that the appointment in para 1 of the memorandum is upheld and that appointment on compassionate ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of Government employee is valid. It is not on the ground descent simpliciter, but exceptional circumstance for the ground mentioned. It should be circumscribed with suitable modification by an appropriate amendment to the memorandum limiting to relieve the members of the deceased employee who died in harness, from economic distress. In other respects Article 16(2) clearly attracted."

6. The Apex Court in another judgment of State of Madhya Pradesh and others Vs. Ramesh Kumar Sharma, has made it very clear that appointment on compassionate ground does not create any vested right in favour of the relatives. However, at the relevant time in order to see that the family of the deceased

employee can overcome the crisis which is created on account of the death of the employee, appointment can be made within the specific period. In the present case, the petition has been filed almost after a lapse of fifteen years after the death of the employee. In the year 1993, when the petition was filed, there was no immediate necessity in respect of the crisis which had existed from the death of the father of the petitioner in the year 1975. We do not find any reason to interfere with the order of rejection passed by the respondent while exercising our jurisdiction under Articles 226 and 227 of the Constitution of India. In the result, writ petition is dismissed. Rule is discharged. In the circumstances, there shall be no order as to costs.

Writ petition dismissed.