
(1996) 01 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No. 5428 of 1995

Ramesh Ambadasrao Joshi

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-01-1996

Acts Referred:

Citation : (1996) 3 BomCR 173 : (1996) 2 LLJ 1216

Hon'ble Judges : V.K. Barde, J;N.P. Chapalgaonkar, J

Bench : Division Bench

Advocate : N.J. Pahune Patil, for the Appellant; A.S. Rasal, for the Respondent

Judgement

Chapalgaonker, J.—Petitioner's father was working as a teacher in the service of Zilla Parishad Aurangabad. He died on November 2, 1972 while in service. It is alleged that petitioner's mother i.e. wife of the deceased applied to the Zilla Parishad requesting that whenever her son would attain majority he should be considered for service in the Zilla Parishad but the Zilla Parishad informs that its record shows that such an application is not there.

2. Petitioner attained majority in the year 1984 and thereafter on January 7, 1984 an application was submitted by him to the Zilla parishad requesting that he be given service in the Zilla Parishad on compassionate ground. This application was rejected on the ground that the applicant did not conform with the requirement of the rules and the petitioner was accordingly intimated on August 3, 1988 and on January 25, 1989. Petitioner was similarly intimated on August 30, 1990 that the application could not be considered by the Desk Officer of Rural Development Department of the state of Maharashtra since it does not fall within 5 years of the death of the person on whom the applicant was dependent.

3. When the Block Education Officer, Panchayat Samiti made further correspondence, he was also intimated by the Education Officer, Zilla Parishad Aurangabad on October 28, 1991 of the rejection of the Claim of the petitioner

and thereafter, after about 4 years this writ petition has been filed in this court.

4. State of Maharashtra introduced a scheme on April 23, 1976 for the benefit of the servants of the state who died during the service or had to take premature retirement because of serious illness like T.B or cancer. The scheme was amended from time to time. Petitioner claims benefit under this scheme.

5. Appointment on compassionate ground is often misunderstood. It is not a scheme to give employment to the family members of the person who was in the service of the State or other similar institutions. It is not that merely because somebody had died during the service, his son, daughter or wife will get employment automatically. There is absolutely no vested right of employment to such a person. The purpose of the scheme is to meet emergent financial crisis that has arisen in the family due to sudden death of the earning member on whom other members are dependent. Therefore there is no propriety in giving employment to any body after 20 years of the death of the concerned person who was in service. There is also no propriety in giving somebody service by-passing other norms merely because he was related to the person who was in service by-passing the claims of other eligible persons.

6. As a rule appointments in the Government service or service in similar institutions are to be made strictly on the basis of open invitation of applications and merits. However there are some exceptions carved out in the interest of justice and to meet certain contingencies, as pointed out by the Supreme Court in the case of State of Haryana and Ors. v. Umesh Kumar Nagpal and Anr. 1995 I LLJ 798. 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.

7. Supreme Court was pleased to further observe at page 799:

""The object is not to give a member of such family a post much less a 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....

Unmindful of this legal position some Government and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above classes III and IV. That is legally impermissible."

Supreme Court was pleased to further observe at page 800:

"For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period, which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

8. In the present case admittedly the person who was in service died in the year 1972 i.e about 23 years back. It is now irrelevant to consider as to what was the necessity of the family about 23 years before while we consider grant of the relief to the petitioner. Second hurdle in the way before the petitioner is that his father died in the year 1972 when there was no scheme in operation for appointment on the compassionate ground with the State of Maharashtra, or Zilla parishads in the State of Maharashtra.

The Scheme was first introduced in 1976.

9. Shri Pahune Patil, learned Counsel on behalf of the petitioner, contended that the application was wrongly rejected on the ground that it was not presented within 5 years from the date of death of the person concerned. It is true that this Court has taken a view that merely because an application was not presented within 5 years, the claim of such applicant should not be rejected if it shows that he was minor or was prevented from applying for a similar disability during the course of 5 years period prescribed by the rules. Therefore, if somebody attains majority even after 5 years of the death and if the financial crisis of the same degree continues and if the authorities are confident that the petitioner who claims employment on the compassionate ground will look after the family and there is no other gainfully employed person in the family, then only such claims will have to be considered by the authorities. It is not that in all cases the applications submitted years after the death of the person in service are bound to consider those applications.

10. We also wish to observe that the State Government, Zilla Parishad or other public authorities wherein such a provision for appointment on compassionate ground is in existence, should be vigilant to dispose of all such claims as expeditiously as possible because lapse or lethargy on their part is equivalent to negating the whole purpose of the scheme. Special care should be taken by the responsible officers to dispose of such claims as expeditiously as possible after making due inquiry.

11. For the reasons stated above, we dismiss writ petition summarily.