

(2007) 03 BOM CK 0120
In the Bombay High Court
Case No : Writ Petition No. 6494 of 2006

Sanjay Patil

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 01-03-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 16(2)

Citation : (2007) 6 ALLMR 871 : (2007) 6 BomCR 439 : (2007) 4 MhLj 210

Hon'ble Judges : R.M. Borde, J;Naresh H. Patil, J

Bench : Division Bench

Advocate : N.B. Suryawanshi, for the Appellant; K.M. Suryawanshi, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Naresh H. Patil, J.—Heard.

2. Rule. Rule returnable forthwith.

3. Petitioner sought appointment on compassionate ground in Class III category on account of death of his father who was working on the post of Forest Guard. The petitioner is qualified upto B.Sc. On 26-10-1993 the petitioner was given appointment as Forest Guard in Class III category. The petitioner joined his service on the said post. Thereafter the petitioner made representation to the respondent No. 3 to accommodate him on the post of Forester or Accountant. By a communication dt. 29-7-99, the petitioner was informed by the Deputy Conservator of Forests, Newai Forest Division, Taloda that his request could not be considered. By communication dt. 2-11-2001, the petitioner requested respondent No. 2 for appointing him on the post of Forester or Accountant. The petitioner pointed out that in six cases of compassionate appointments made in Dhule forest circle, four persons were appointed as Accountants and one person was appointed as Surveyor, after considering their educational qualification.

4. Petitioner filed appeal before the Maharashtra Administrative Tribunal seeking

appointment as Accountant or Forester. By an order dt. 7-12-2005, the Maharashtra Administrative Tribunal dismissed the Application No. 131/04 filed by the petitioner. The contention of the learned Counsel for the petitioner Shri N.B. Suryawanshi is that there cannot be discrimination between candidates who seek employment on compassionate ground. In the case of other candidates, the department appointed them on better posts like Forester and Accountant, whereas the petitioner was appointed though in the same Class III cadre to a post of Forest Guard.

5. The learned Counsel placed reliance on reported judgment in the case of Surya Kant Kadam v. State of Karnataka AIR 2001 SCW 2386 for supporting his contention that the two candidates cannot be discriminated against each other while considering their educational qualification and the post to which they are appointed on compassionate basis.

6. The State filed affidavit in reply. Respondent-State placed on record Government Resolutions issued from time to time in this behalf. A list of posts falling in Class III is also annexed with the reply. A copy of order made by the Conservator of Forests, Dhule rejecting the request of the petitioner for seeking appointment as Forester is also placed on record, stating therein that in absence of rules in this regard, the petitioner cannot be appointed. In the further communication made by the Chief Conservator of Forests, Nagpur, Maharashtra State addressed to the Conservator of Forests dt. 5-1-99, it is intimated that the post of Forester is not included in the list of 14 posts which are considered for issuing appointment orders in Class III cadre.

7. Respondent State has also placed reliance in the decision reported in 2002 (11) CLR 14, Haryana State Electricity Board v. Krishal Devi for supporting its contention that employment on compassionate ground is given purely on humanitarian consideration and no appointment should be claimed as a matter of right. Appointment cannot be made in absence of rules and instructions issued by the Government.

8. The petitioner claims appointment on compassionate ground to a particular post on the basis that other candidates who were appointed on compassionate basis secured such appointment. However, representation of the petitioner was not accepted by the concerned department. Considering the object behind employing candidates on compassionate ground, looking to the educational qualification, availability of the posts and other circumstances, the concerned department appointed the petitioner in class III cadre to a post namely "Forest Guard."

9. The claim of appointment on compassionate ground is considered on the basis of sudden crisis occurring in the family of the employee who served the State/ Department and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right. Such appointments have to be regulated by framing suitable rules, regulations or administrative instructions in this

regard. Appointment on compassionate ground is made due to death of the employee who dies while in service by leaving his family without any means of livelihood.

10. The petitioner got benefit of compassionate appointment but the insistence of the petitioner is that he ought to have been appointed to a particular post like others. The grievance of the petitioner that he was discriminated as against the candidates who got better posting as compassionate appointees, does not deserve consideration in view of the object behind appointing persons on compassionate ground.

11. We may refer to a reported judgment of Apex Court in the case of State Bank of India v. Somveersingh 2007 page 42. The Apex Court observed in para 7 as under:

Article 16(1) of the Constitution of guarantees to all its citizens equality of opportunity in matters relating to employment or appointment to any office under the State. Article 16(2) protects citizens against discrimination in respect of any employment or office under the State on grounds only of religion, race, caste, sex, descent. It is so well settled and needs no restatement at our ends that appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependants of employees died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer.

12. In the case of State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir, the Apex Court observed in para 11 as:

Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution.

13. From the facts of the case, we do not find that the petitioner has a legal right to seek writ or direction from this Court to the respondents for appointing the petitioner as Forester or Accountant. The petition is devoid of substance and stands rejected. Rule is discharged. No costs.