

(2018) 04 BOM CK 0092
In the Bombay High Court
Case No : WRIT PETITION NO. 7648 OF 2015

SEEMA KAUSAR MOHAMMAD NASIRUDDIN	APPELLANT
Vs	
STATE OF MAHARASHTRA AND OTHERS S.	RESPONDENT

Date of Decision : 03-04-2018

Acts Referred:

Constitution of India — Article 14, 16

Citation : (2018) 04 BOM CK 0092

Hon'ble Judges : A. M. DHAVALA, S. V. GANGAPURWALA

Bench : Division Bench

Advocate : N. E. Deshmukh, P. S. Patil, AGP, Sayyed Tauseef Yaseen,
M. A. Kulkarni

Final Decision : Dismissed

Judgement

A. M. DHAVALA, J.

1.The petitioner seeks compassionate appointment as Asst. Teacher in a School run by respondent No. 4.

2.According to the petition, the petitioner's father Mohammed Nasiruddin S/o. Md. Yusufuddin was working as Asst. Teacher from 01.06.1988 in a

school run by respondent No. 4. He died on 07.07.2013 due to heart attack.Â The petitioner has passed H.S.C., D.T.Ed.Â The petitioner's mother

and siblings had given their consent for her appointment in one of the three schools or Junior College of respondent No.4ÂSociety.Â One post of

Asst. Primary Teacher is vacant in Nehru Memorial Urdu High School run by respondent No.4.

3.Respondent No. 4 filed affidavit of its President Â Mohd. Kamal Farooqui.Â He admitted the material facts regarding service of father of the

petitioner and the qualification of the petitioner and vacancy of one post of Asst.

Primary Teacher but he claimed that the said vacancy occurred in 2017. He opposed the petition on the grounds that:

(i) The petitioner is married. Her husband is gainfully employed.

(ii) Her mother Mehrunnisa receives monthly pension of Rs.20,000. Besides she received huge retiral benefits of her deceased husband. The

petitioner's sister Jaha Aara Bano is a Medical Officer in Jalgaon Government Hospital. The petitioner's sister Fatema Anjum is serving as a Teacher

in Primary School run by Municipal Corporation, Aurangabad and elder brother is serving as a Lecturer in Shree Yash Polytechnic College,

Aurangabad.

(iii) The compassionate appointment cannot be made when the family is having sufficient sources of income.

4. The petitioner filed rejoinder. She denied that, her elder brother was serving as a Lecturer and claimed that he was studying in 2nd year of M.E.

while younger brother is studying in 11th std. She claimed that, her elder sisters are married prior to death of her father. They are part of their

family. Their employment is on temporary basis. She stated that, after filing the present petition, she got married. Her husband was working as a

Labourer. He is not a qualified Pathologist. At the time of marriage, she had assured to take care of her brothers and mother, which resulted into

differences between herself and her husband and she was residing with her mother at Aurangabad. The receipt of family pension is not

disqualification for appointment on compassionate ground. It will be eventually reduced to Rs. 10,000 per month, which is insufficient to bear the

monthly expenses.

5. Heard Shri. N. E. Deshmukh, learned counsel for the petitioner, Shri. P. S. Patil, learned Asst. Government Pleader for State, Shri. Sayyed Tauseef,

learned counsel for respondent No. 4 and Shri. M. A. Kulkarni, learned counsel for respondent No. 5.

6. Mr Deshmukh has relied on Shaikh Mohamad Rizwan Abdul Quadir versus The State of Maharashtra (Writ Petition No. 6678 of 2011 decided by

Division Bench of this Court at Aurangabad on 31.01.2012), Kalpana Bachhav v Chief General Manager 2016(5) Mh.L.J. 182 and Balbir Kaur v

Steel Authority of India Limited AIR 2000 SC 1596.

7.Per contra, learned counsel for respondents relied on Punjab National Bank v Ashwini Kumar Taneja (2004) 7 SCC 265.

8.From the documents on record, the pleadings and the submissions made at the bar, there is no technical difficulty in appointing the petitioner on

compassionate ground except the financial condition and the requirement of the petitioner.Â The petitioner's father died while in service.Â She is

qualified to be appointed on the post of Asst. Primary Teacher.Â She is major and she has applied for appointment within time.

9.The compassionate appointments are governed by Govt. Resolution dt. 31.12.2002. The provision of compassionate Â appointment applicable to the

State Government are made applicable to private aided and unaided schools for both, teachers and nonÂteaching staff.Â The Schedule 'A' to the said

Govt. Resolution discloses the rules for such appointments.

10.As per clause 3a, following persons are eligible for appointment Â Wife, Husband, Son, Dependent unmarried daughter and Adopted son. If noÂ

relative of above categories available then daughterÂinÂlaw is eligible for compassionate appointment. If above relatives are not there then dependent

brother or unmarried sister are also eligible.

11.Rule 5A lays down that, the application for compassionate appointment has to be moved within three months from the date of death.Â Rule 7A

prescribes that, there is no condition about limit of monthly income or wealth.Â Rule 7B prescribes that, if any relative of the deceased is already in

service but he is not supporting the family members, then the financial difficulties of the family should be verified by the appointing authority with

extreme caution.Â It also lays down that, the family pension, the properties of the family, number of dependents, liabilities and the expenditure should

be Â taken into consideration.

12.In the present case, the petitioner was aged 24 years.Â The petitioner has two sisters. Jaha Aara is elder to her while Fatema Anjum is younger to

her and both are shown as married.Â Besides, she has two brothers aged 18 years and 12 years, respectively, who are shown to be taking education.

13.The petitioner produced bona fide certificate of Shree Yash Pratishthan showing that her brother Mohammad was studying in 2nd year of M.E. as

on 17.01.2018.Â Respondent No. 4 attempted to obtain information from Shree Yash Polytechnic but as per the letter of respondent No. 1, this

information was not supplied.

14. In Shaikh Mohamad Rizwan's case (supra), the right of appointment as Primary Teacher on compassionate ground under Govt. Resolution dt.

31.12.2002 has been recognized but the facts in that case were different.

15. In Kalpana Bachhav's case (supra), Vinayak working as T.M. died leaving behind a widow and two daughters. The criteria of indigent condition

was considered and marks were allotted. The writ petition was allowed with direction to reconsider the application of the petitioner. This also does

not help to resolve the issue involved in this matter.

16. In Balbir Kaur's case, the condition to deposit gratuity and provident fund amount with the employer was held illegal. It is held that,

introduction of Family Benefit Scheme in terms of NJSC tripartite agreement cannot possibly give a go by to the entitlement of compassionate

appointment. Clear existing obligation has been expressly saved. After considering the scheme of compassionate appointment of Steel Authority of

India, the High Court's order refusing the prayer for compassionate employment was set aside and the respondent was directed to consider the

case for the compassionate appointments.

17. In Phoolkumari Gupta v Union (Writ Petition No. 3293 of 1999 decided on 09.04.2002) Bombay 2002 (6) LJSoft 24, the widow filed an application

for compassionate appointment and she was getting family pension and had received retiral dues. It was held that, it cannot be valid reason to

reject the application for compassionate appointment.

18. In Punjab National Bank's case (supra), the Rajasthan High Court had granted petition for compassionate appointment holding that rejection of

application on the ground of receipt of retiral benefits was not proper. The Apex Court took resume of the case law and observed as follows.

[a] Strictly the claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as

reasonable and permissible on the basis of sudden crisis occurring in the family of such 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. [State of Haryana v. Rani Devi (1996) 5 SCC 308].

[b]Appointment on compassionate ground cannot be claimed as a matter of right.Â DieÂinÂharness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee.Â If the scheme is extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds.Â [State of Â Haryana v. Rani Devi (1996) 5 SCC 308]

[c]The High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments when the regulations framed in respect thereof do not cover and contemplate such appointments.Â [LIC of India v. Asha Ramchandra Ambekar (1994) 2 SCC 718]

[d]As a rule public service appointment should be made strictly on the basis of open invitation of application and merit.Â The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood.Â In such cases the object is to enable the family to get over sudden financial crisis.Â Such appointments have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. [Umesh Kumar Nagpal v. State of Â Haryana (1994) 4 SCC 138]

[e]In all such claims, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the breadÂearner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress.Â The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specifically otherwise.Â Â [Sushma Gosain v. Union of India (1989) 4 SCC 468]

[f]The amounts of retiral benefits have to be taken into consideration. The guidelines are circulated by the Bank for considering the Family Pension, Gratuity, Provident Fund, compensation paid by the Bank, Proceeds of LIC policy, Income of family from other sources, Employment of other family members and size of the family and liabilities. [G.M. (D&PB) v. Kunti Tiwary (2004) 7 SCC 271].Â

[g] In matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having

regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for

giving appointment to one of the dependents of the deceased who may be eligible for appointment.Â It is in the nature of exception to the general

provisions, it cannot substitute the provision to which it is an exception and thereby nullify the main provision. [Director of Education (Secondary) v.

Pushpendra Kumar (1998) 5 SCC 192]

19. After carefully considering the guidelines and applying them to the facts of the present case, we find that this is not a fit case for allowing the

petition for following reasons.

(i) The petitioner is a married daughter whereas; the deceased has two sons out of which one is grown up son studying in ME IInd year.Â The

married daughter is not eligible for appointment.Â

(ii) The petitioner did not disclose that she was married and later on she came with a case that after the petition was filed, she got married. She did not

produce her Nikahnama to show the date of marriage and her case that her husband was a Labourer and due to dispute, she had left him is clearly

afterthought.

(iii) As per service book, the deceased was drawing basic pay of Rs. 21820/Â and Grade Pay of Rs. 4900/Â total Rs. 26720/Â. The respondents

contended and the petitioner did not dispute that the petitioner's mother is getting family pension of Rs. 20,000/Â per month.Â It is also argued that

huge amounts are received by petitioner's mother from PF, Gratuity and other retiral benefits.Â

20. No doubt, the grant of such benefits by itself will not take away the right to claim appointment on compassionate ground but if the family is not in

financial crunches on account of receipt of huge Â amount of retiral benefits and on account of handsome family pension, the appointment on

compassionate ground being Â discretionary cannot be given to such family which is not having Â financial crunches.

21. The petitioner's two sisters are earning but are married therefore their income cannot be taken into consideration. Petitioner's younger brother is

minor and studying.Â The petitioner's elder brother is studying in ME IInd year.Â

Normally, the petitioner's elder brother should have applied for compassionate appointment but he has not applied.

22. In the light of the above facts, the application deserves to be rejected on the ground of sound financial position of the family and the petitioner not being eligible family member for appointment on compassionate ground.Â

23. The Writ Petition is dismissed.Â Rule discharged.Â No order Â as to costs.