

(2023) 06 BOM CK 0056
In the Bombay High Court
Case No : Writ Petition No. 3160 Of 2023

State Of Maharashtra And Others

APPELLANT

Vs

Subhashrao Bhende

RESPONDENT

Date of Decision : 12-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2023) 06 BOM CK 0056

Hon'ble Judges : A.S.Chandurkar, J;Vrushali V. Joshi, J

Bench : Division Bench

Advocate : N.P. Mehata, N.R.Saboo

Final Decision : Allowed

Judgement

Vrushali V. Joshi, J

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.
3. The petitioners are challenging the order passed by the Maharashtra Administrative Tribunal in Original Application No.404 of 2021. This is the fourth round of litigation. In all three rounds of litigations were before the Maharashtra Administrative Tribunal, the orders were passed in favour of the respondent No.1. The petitioners have not challenged the earlier orders passed by the Tribunal. The direction was given to the petitioners in all the three petitions before the Tribunal to consider the respondent for compassionate appointment. The petitioner had considered the case of the respondent on merits and rejected his candidature. Thereafter, the direction was given in Original Application No.404 of 2021 to provide employment to the respondent on compassionate ground within a period of one month. Being aggrieved by the said order the petitioners have filed this writ petition.

4. Brief facts of the case are as under:-

The respondent is the son of Subhashrao Bhende. Subhashrao Bhende died on 19.11.2002 in harness. He was working as Police Constable. At that time, the respondent was nine years of age, he was minor. The mother of the respondent has applied for an employment on compassionate ground on 04.01.2003. The name of the mother of the respondent was taken on the waiting list. Thereafter, the respondent applied on 05.07.2011, after the respondent attained the majority for substitution of his name in place of name of his mother. The name of the respondent was substituted. Though the name of the respondent was substituted, it was informed to the respondent that there is no provision of substitution and therefore, he has filed the Original Application bearing No. 382 of 2013 before the Maharashtra Administrative Tribunal. The Tribunal has directed the petitioner No.2 herein to consider the name of the respondent herein for appointment on compassionate ground on it's own merits. The name of the respondent was not considered on the ground that the family is having one acre agricultural land and their financial condition is sound. The order passed on 04.07.2017 was again challenged by filing the Original Application No.952 of 2017. The Tribunal has allowed the Original Application and direction was given to the petitioner No.2 herein to consider the case of the respondent herein as per his seniority in the waiting list for appointment on compassionate ground. Again, petitioner No.2. has not considered the candidature of the respondent and informed the respondent that his family has received the gratuity and having one acre agricultural land and therefore his family is having sound financial condition and therefore, again the respondent has approached the Maharashtra Administrative Tribunal challenging the said order.

5. The Maharashtra Administrative Tribunal by passing the remarks that only to disobey the order passed by the Maharashtra Administrative Tribunal, the petitioners are not intentionally providing the service and committing the breach of order of the Tribunal directed to give the employment to the respondent on compassionate ground within a period of one month.

6. The learned AGP appearing for the petitioners has stated that the mother of the respondent vide letter dated 12.11.2011 requested the petitioner No.2-department to include the name of her son in class-III category in the seniority list of candidate. Inadvertently, her application was accepted and name of the respondent was included in the waiting list. However, as per directives given in the GR dated 22.08.2005, the candidates who have completed 40 years of age, their names shall be deleted from the seniority list. In view of this, the name of respondent's mother was deleted on completion of her 40 years of age and it was informed to the mother of the respondent that her name is deleted and there is no provision of substitution of name of other family member.

7. As per the order passed, she has filed the Original Application before the Maharashtra Administrative Tribunal and as per the orders of Tribunal, the name of the respondent was considered for appointment and while rejecting his

candidature, the petitioner No.2 has informed that the claim of compassionate appointment of his mother was already considered in the year-2005 on completing 40 years of age and as she has refused to accept the offer of class-IV category post and on refusing the offer, she has lost her right to claim the appointment on compassionate ground. In that case, there remained no right for her to make an application for substituting the name of the respondent in her place. As the direction was given to take the appropriate decision and consider the case of the respondent on its own merits, the petitioners informed the respondent on 04.07.2021 that as per GR dated 22.08.2005 and 06.10.2010, the name of the mother of the respondent was deleted as she has completed age of 40 years of her age. As she had refused for the recruitment process for class-IV category, she had not responded to it, which showed that she was not in need of job. It was informed that the candidate cannot claim compassionate appointment as a vested and heritable right and as there is no provision of substitution of name in the prevailing policy decisions, the name of the respondent also was deleted.

8. The respondent thereafter, again approached the Tribunal challenging the communication dated 04.07.2017 by filing Original Application No.952 of 2017. In compliance of the judgment passed in Original Application No. 952 of 2017, the petitioner No.2 included the name of the respondent in seniority list in place of his mother at Sr. No.6. At that time, the matter was reviewed on the basis of his financial condition and whether after passage of time, his claim is tenable as per the guidelines provided in the policy decisions. The confidential report regarding financial condition of respondent was called from Achalpur Police Station, whereby it came to the knowledge of petitioner No.2 that the elder sister of respondent was doing job in police force since 2007 and the family of the respondent is having 1 acre cultivating land, which shows his financial condition is better than the time when his father expired. It is argued that the compassionate employment cannot be claimed as a vested and heritable right and

it cannot be claimed after the passage of time as per the guidelines in cases of the Hon'ble Apex Court.

9. It is submitted that considering the policy decisions, the financial status of respondent's family and the guidelines of the Apex Court, the petitioners have rightly rejected his claim of compassionate appointment and as such, his name was deleted from seniority list vide communication letter dated 03.07.2020. Again the respondent has challenged the said communication dated 03.07.2020 by filing Original Application No.404 of 2021. Said Original Application is also allowed by the Tribunal and direction was given to provide employment to the respondent within a period of one month which is challenged in this writ petition.

10. The respondent opposed the petition stating that at the time of death of father of the respondent, he was 9 years of age and his mother was educated up to 9th standard and therefore, could not be appointed on compassionate

ground. Petitioner No.2 accepted the representation of respondent and the call letter was issued to him on 16.11.2011. Accordingly, he remained present. As per seniority list, he was not selected and he was shown on waiting list and thereafter, by letter dated 09.05.2013 informed that name of respondent cannot be substituted. All the three orders of Maharashtra Administrative Tribunal are in favour of respondent. The grounds of refusal to accept the job was not raised and the earlier orders were not challenged by the petitioners. The orders passed by the Tribunal attained finality. Hence, proceed to dismiss the petition.

11. The respondent had filed three proceedings before the Maharashtra Administrative Tribunal for grant of appointment on compassionate ground. The father of the respondent died in harness. In all the three proceedings,, the direction was given to the petitioner No.2 to consider the name of the respondent for compassionate appointment. Since, 2001 to 2023, the family has survived. Though the petitioners have not challenged earlier two judgments passed by the Maharashtra Administrative Tribunal and the ground that once the mother of the respondent has refused to accept the job for class-IV employee, the right for compassionate appointment is already exhausted. The name of the respondent was substituted. As per GR, there was no provision of substitution of the name. It appears from the record that even before deleting the name of the mother of respondent, the name of respondent was included in waiting list and he was called for interview in the year 2011 and thereafter, the petitioner came to know about the mistake committed by the clerk and it was corrected in the year 2013 by deleting the name of mother of respondent and rejecting substitution.

12. As per the order passed by the Maharashtra Administrative Tribunal to consider the case of the respondent on merits, the petitioner No.2 has considered it on merits and as per the prevailing scheme and the GR, the ground of substitution was not available, it was considered as per the direction of Maharashtra Administrative Tribunal and it was rejected.

13. Again the said rejection was challenged and direction was given to consider him as per his seniority and again the candidature of the respondent was considered. The financial condition was considered by calling the report and as one of the member was in government job, i.e. the sister of the respondent was in Police Department and she was in job since-2007, they owned one acre agricultural land and the mother of the respondent was getting the pension, again it was rejected. An order was passed and direction was given to the petitioners to give employment to the respondent which is against the scheme, the petitioners have challenged it.

14. The Hon'ble Apex Court has given the guidelines and it was considered by this Court on 06.12.2021 in Writ Petition No.43 of 2020 (Aarti Purushottam Nimje Vs. The State of Maharashtra and ors.). The compassionate appointment cannot be offered after lapse of substantial period of time, since the death of the earning member of the family. Considering the period of litigation, since 2002 to 2023, and refusal of the mother to accept the job when offered on

compassionate ground, it would suggest that there was no immediate need to seek appointment on compassionate ground.

15. The Hon'ble Apex Court observed in the case of Union of India Vs. P. Venkatesh reported in (2019) 15 SCC 613 in paragraph No.7 as under:-

"7. The primary difficulty in accepting the line of submissions, which weighed with the High Court, and were reiterated on behalf of the respondent in these proceedings, is simply this: Compassionate appointment, it is well-settled, is intended to enable the family of a deceased employee to tide over the crisis which is caused as a result of the death of an employee, while in harness. The essence of the claim lies in the immediacy of the need. If the facts of the present case are seen, it is evident that even the first recourse to the Central Administrative Tribunal was in 2007, nearly eleven years after the death of the employee. In the meantime, the first set of representations had been rejected on 3 January 1997. The Tribunal, unfortunately, passed a succession of orders calling upon the appellants to consider and then re-consider the representations for compassionate appointment. After the Union Ministry of Information and Broadcasting rejected the representation on 13 November 2007, it was only in 2010 that the Tribunal was moved again, with the same result. These successive orders of Tribunal for re-consideration of the representation cannot obliterate the effect of the initial delay in moving the Tribunal for compassionate appointment over a decade after the death of the deceased employee.

16. The Hon'ble Apex Court has also observed in the judgment dated 30th September 2022, delivered in Civil Appeal No.6958 of 2022 (Fertilisers and Chemicals Travancore Ltd. And ors. Vs. Anusree K.B) in paragraph Nos. 7 to 10 as under:

"7. While considering the issue involved in the present appeal, the law laid down by this Court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision, this Court in the case of Director of Treasuries in Karnataka and Anr. Vs. V. Somyashree, 2021 SCC Online SC 704, had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this Court in N.C. Santhosh Vs. State of Karnataka, (2020) 7 SCC 617, this Court has summarised the principle governing the grant of appointment on compassionate ground as under:-

(i) that the compassionate appointment is an exception to the general rule;

(ii) that no aspirant has a right to compassionate appointment;

(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria

as per the policy;

(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

8. As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

8.1 In the case of State of Himachal Pradesh and Anr. Vs. Shashi Kumar reported in (2019) 3 SCC 653, this Court had an occasion to consider the object and purpose of appointment on compassionate ground and considered the decision of this Court in the case of Govind Prakash Verma Vs. LIC, reported in (2005) 10 SCC 289, in paras 21 and 26, it is observed and held as under:-

"21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138]. The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138], SCC pp. 139-40, para 2)

"2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. 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. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for 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. The posts in Classes III and IV are the lowest posts in non- manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

26. The judgment of a Bench of two Judges in *Mumtaz Yunus Mulani v. State of Maharashtra* [(2008) 11 SCC 384] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in *Govind Prakash Verma* [*Govind Prakash Verma v. LIC*, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.”

9. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and 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. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.

9.1 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground

is provided, the respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided.

17. While considering the issue of compassionate appointment, the law laid down by the Apex Court is required to be referred and considered.

18. The compassionate appointment is not a matter of right but is to enable the family to tide over an immediate crisis which may result from the death of employee. The respondent objected for calculating the pension, while considering the financial status of respondent. It cannot be said that by taking into account the pensionary payment the petitioners have considered an extraneous circumstance.

19. The respondent also relied on the paragraph No.5 of the judgment in the case of Govind Prakash Verma Vs. Life Insurance Corporation of India and ors. reported in 2004 DGLS (SC) 1265.

"5. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the filed. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the inquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make inquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow

and the family pension could not be taken into account.”

20. The sister of the respondent is in government job in Police Department since 2007 was not disclosed by the respondent. She was in service when he has applied for appointment. The Hon’ble Apex Court has observed in the case of State of Himachal Pradesh and another Vs. Prakash Chand, reported in (2019) 4 SCC 285 in paragraph Nos.5, 6, 7 and 9 as under:

“5. The Policy framed by the State Government contains the following conditions of eligibility in paragraph 5(c):

“In all cases where one or more members of the family are already in government service or in employment of autonomous bodies/bodies/Boards/Corporations, etc. of the State/Central Government, employment assistance should not under any circumstances be provided to the second or third member of the family. In cases, however, where the widow of the deceased government servant represents or claims that her employed sons/daughters are not supporting her, the request of employment assistance should be considered only in respect of the widow. Even for allowing compassionate appointment to the widow in such cases the opinion of the Department of Personnel, and Finance Department should specifically be sought and the matter finally decided by the Council of Ministers.”

6. In the batch of cases which has been disposed of by the High Court, one of the issues which were framed for decision was as follows: (Surinder Kumar case, SCC OnLine HP para 46)

“46.(ix)In case one or more dependants of a deceased- employee is/are in service, though living separately, whether that can be made a ground to deny compassionate appointment to the other dependant of the deceased-employee?”

7. The policy contains a stipulation that where one or more persons of the family are already in the employment of the State Government or of autonomous bodies, Boards, Corporations, etc. of the State or the Central Government, employment assistance should not be provided to another member of the family. However, an exception is carved out in the case of the widow of the deceased government employee, if she claims that her employed children are not supporting her. Before allowing compassionate appointment, the opinion of the Department of Personnel and Finance Department is required to be sought and the matter is left to the ultimate decision of the Council of Ministers.

8.

9. The High Court has observed that the State should consider cases for appointment on compassionate basis by dealing with the applications submitted by sons, or as the case may be, daughters of deceased government employees, even though, one member of the family is engaged in the service of the Government or an autonomous Board or Corporation. This direction of the judgment of the High Court virtually amounts to a mandamus to the State

Government to disregard the terms which have been stipulated in Paragraph 5(c) of its Policy dated 18 January 1990. The Policy contains a limited exception which is available only to a widow of a deceased employee 1 (2005) 10 SCC289 who seeks compassionate appointment even though one of the children of the deceased employee is gainfully employed with the State. The basis for this exception is to deal with cases where the widow is not being supported financially by her children."

21. The situation in the case in hand is different. The mother of respondent has not accepted or refused the employment for Class IV employee or in other words she has not responded to said offer. Said remedy was already exhausted.

22. The respondent has relied on paragraph No.14 of the judgment in the case of Malaya Nanda Sethy Vs. State of Orissa and others reported in 2020 DGLS (SC) 626 in support of his argument about delay which is not on the part of respondent.

"14. Thus, from the aforesaid, it can be seen that there was no fault and/or delay and/or negligence on the part of the appellant at all. He was fulfilling all the conditions for appointment on compassionate grounds under the 1990 Rules. For no reason, his application was kept pending and/or no order was passed on one ground or the other. Therefore, when there was no fault and/or delay on the part of the appellant and all throughout there was a delay on the part of the department/authorities, the appellant should not be made to suffer. Not appointing the appellant under the 1990 Rules would be giving a premium to the delay and/or inaction on the part of the department/authorities. There was an absolute callousness on the part of the department/ authorities. The facts are conspicuous and manifest the grave delay in entertaining the application submitted by the appellant in seeking employment which is indisputably attributable to the department/authorities. In fact, the appellant has been deprived of seeking compassionate appointment, which he was otherwise entitled to under the 1990 Rules. The appellant has become a victim of the delay and/or inaction on the part of the department/authorities which may be deliberate or for reasons best known to the authorities concerned. Therefore, in the peculiar facts and circumstances of the case, keeping the larger question open and aside, as observed hereinabove, we are of the opinion that the appellant herein shall not be denied appointment under the 1990 Rules."

23. In the case in hand, the job was offered to the mother of respondent and she has not accepted it in the year 2005 and thereafter, the litigations were continued till 2023.

24. Thus, we hold that, the need to offer succour by offering an appointment on compassionate ground to save the family from financial distress did not really exist on the date of the institution of the present proceedings. The sister though now is married, she was in employment, when the name of the respondent was substituted in the waiting list. The family could survive for all these years.

25. It is to be noted that the Tribunal failed to take into consideration the grounds mentioned in the communication dated 3. 07.2020 by which the request made by the respondent for appointment on compassionate basis came to be refused. In the said communication, it has been stated that the mother of the respondent had received an amount of Rs.2,07,890/- after the death of her husband, the elder sister of the respondent had been appointed as Police Constable in the year 2007 and till her marriage it was likely that she had taken care of the family and further that the family was owning agricultural land. In addition, it is stated that the offer of compassionate ground was not accepted by the respondent's mother in the year 2007 and therefore, that claim came to an end. After noting that the respondents father had expired on 19.11.2000 and that a period of 18 years had elapsed. The claim for compassionate appointment came to be turned down. In the impugned judgment dated 24.11.2022, the reference has been made only to the effect that the family had received retiral benefits and that it was owning one acre agricultural land. The other aspects contained in the communication dated 03.07.2020 have not been considered. It is to be noted that in the earlier proceedings being Original Application No. 952 of 2017 decided on 12.02.2019 there was a clear direction to the petitioners to consider all aspects while considering the case of the respondent for appointment on compassionate basis. This was done while issuing the communication dated 03.07.2020, we therefore, do not find any basis for the Tribunal to observe that the present petitioners had failed to comply with this order dated 12.02.2019. It also cannot be said that the petitioners were intentionally not complying with the earlier orders passed by the Tribunal when the claim of the respondent came to be denied. On this count, it would be necessary to interfere with the order passed by Maharashtra Administrative Tribunal.

26. Considering the financial condition and government job of the family member of the respondent, we are of the view that the grant of compassionate appointment would not be in accordance with the basic purpose and object of the scheme. The Tribunal failed to consider these relevant aspects while issuing the direction for appointing the respondent on compassionate basis. It has not been demonstrated that the petitioners had failed to consider relevant aspects while refusing the claim of the respondent.

27. For the above reasons, we allow the writ petition and set aside the impugned judgment and order of the Maharashtra Administrative Tribunal.

28. Rule is made absolute in the afore-stated terms. No order as to costs.