

(2016) 07 BOM CK 0160

In the Bombay High Court

Case No : Writ Petition No. 1341 of 2013

Vijaya Ukarda Athor (Athawale)

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-07-2016

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2016) 5 AIRBomR 139 : (2016) 5 ALLMR 769 : (2017) 2 MhLJ 302

Hon'ble Judges : B.P. Dharmadhikari and Kum. I.K. Jain, JJ.

Bench : Division Bench

Advocate : Mr. G.D. Asole, Advocate, for the Petitioner; Mr. J.B. Kasat, Advocate, for the Respondent No. 2; Mr. N.S. Autkar, Advocate, for the Respondent No. 3; Mr. S.B. Bissa, AGP, for the State

Final Decision : Dismissed

Judgement

Kum. I.K. Jain, J.(Oral)—This petition is directed against the order dated 18-09-2012 passed by respondent no.2 Municipal Corporation appointing respondent no.3 and declaring petitioner ineligible for the compassionate appointment as she got married.

2. Briefly stated the facts are; Late Ukarda Athor (Athawale) was working as a Clerk in Municipal Corporation, Amravati. He had two wives namely Shantabai and Kuntabai. Ukarda died on 18-06-1997. Petitioner Vijaya is daughter of Ukarda through his first wife Shantabai. Respondent no.3 is son of Ukarda through second wife Kuntabai.

3. After the death of Ukarda, Shantabai submitted an application on 29-12-1997 to respondent no.2 stating therein that her daughter is 17 years old and on her attaining majority she may be appointed on compassionate ground in place of her father. On 19-03-1998, after petitioner attained majority she submitted an application in the prescribed form to respondent no.2 for her appointment on compassionate ground. Respondent no.3 also moved an application for

compassionate appointment on 25-05-2009. On 19-04-2012, petitioner raised her objection to compassionate appointment of respondent no.3. Thereafter, impugned order dated 18-09-2012 was passed by Municipal Corporation appointing respondent no.3 Sagar and declaring petitioner ineligible for compassionate appointment as she has already got married.

4. Being aggrieved by the order of refusal to compassionate appointment petitioner filed this Writ Petition. It was dismissed on 18-03-2013, holding that on the date of appointment petitioner was a married daughter and as per the policy decision taken by State Government married daughter was not eligible for compassionate appointment at the relevant time. Petitioner filed an application for review which was dismissed vide order dated 22-11-2013. Both the orders were assailed before the Hon'ble Apex Court in Civil Appeal Nos. 409-410 of 2015 arising out of SLP (C) Nos. 20840-41 of 2014. The orders in Writ Petition and Review Application came to be set aside by the Hon'ble Apex Court on 14-01-2015 and the matter is remitted back for consideration afresh. In paragraph 11, the Hon'ble Apex Court observed -

"11. In our considered view, the questions viz.: (i) the effect of "Government Resolution, General Administration Department, No. Comp. 1093/2335/M.No.90/93/Eight, dated 26.10.1994 and effect of Clause (3)(a); (ii) the plea that the appellant submitted application on 29.12.1997 and 19.03.1998, that the same was not considered by the authorities for quite sometime; (iii) at the time when the applications for compassionate appointment was considered in 2012 whether 3rd respondent was eligible to be considered; (iv) the effect of subsequent policy decision dated 26.02.2013 taken by the State Government as per which the married daughter is also eligible to get compassionate appointment; and (v) such other relevant questions which are to be examined. In our considered view, instead of this Court examining the above questions, the matter is to be remitted back to the High Court for considering the above questions in the light of the facts and circumstances of the case."

5. We have heard Mr. Asole, learned Counsel for petitioner, Mr. Bissa, learned Assistant Government Pleader for respondent no.1, Mr. Kasat, learned Counsel for respondent no.2 and Mr. Autkar, learned Counsel for respondent no.3. On hearing the submissions made by learned Counsel for the parties and the directions issued by the Hon'ble Apex Court, we propose to take question (v) first which relates to such other relevant questions, which are to be examined. This according to us would be regarding object of rules and scheme providing compassionate employment to dependents of the deceased.

6. Learned Counsel for petitioner vehemently contended that before petitioner attained majority her mother submitted an application in the year 1997 itself informing the Municipal Corporation that petitioner was 17 years old and on her attaining majority she be appointed on compassionate appointment in place of her father. Learned Counsel submitted that after petitioner attained the age of majority immediately she moved an application in 1998 but respondent no.2 did

not respond to those applications. It is urged that when applications were moved petitioner was unmarried and she had a precedence over respondent no.3 being a daughter of Ukarda from the first wife. Learned Counsel submitted that denial of an appointment to her on compassionate ground had frustrated the very purpose of compassionate appointment and the order appointing respondent no.3 an illegitimate son would not sustain. She, therefore, submits that the impugned order needs to be set aside and she has to be considered for compassionate appointment in place of her father.

7. Per contra learned Advocate Mr. Kasat for respondent no.2 argues that compassionate employment is an exception and cannot be claimed as a matter of right. He contended that Municipal Corporation never received any application from the mother of petitioner or from the petitioner in 1997-1998. In 2009, respondent no.3 moved an application for compassionate ground which was objected by petitioner. He submits that petitioner got married in 2000 and as per the rules then prevailing she was not entitled to compassionate appointment. Learned Counsel submitted that respondent no.3 being son of the deceased was rightly appointed and subsequent change in the rules wherein married daughter is now considered for compassionate appointment would not be applicable to the case in hand as those rules came into effect in the year 2013. On the scope and object of compassionate appointment Shri. Kasat placed reliance on-

(1) Smt. Sushma Gosain and others v. Union of India and others (1989) 4 SCC 468.

(2) Haryana State Electricity Board v. Naresh Tanwar and another (1996) 8 SCC 23.

(3) V. Sivamurthy v. State of Andhra Pradesh and others (2008) 13 SCC 730.

(4) Local Administration Department and another v. M. Selvanayagam Alias Kumaravelu (2011) 13 SCC 42.

(5) Shreejith L. v. Deputy Director (Education) Kerala and others (2012) 7 SCC 248.

(6) MGB Gramin Bank v. Chakrawarti Singh (2014) 13 SCC 583.

(7) State Bank of India and others v. Surya Narain Tripathi (2014) 15 SCC 739.

(8) Canara Bank and another v. M. Mahesh Kumar (2015) 7 SCC 412.

Learned Counsel for Respondent No.3 adopted the submissions advanced by Shri. Kasat and relied upon the same case law.

8. Law with regard to employment on compassionate ground for dependents of a deceased employee is well-settled. In Sushma Gosain v. Union India (1989) 4 SCC 468 supra the Hon^{ble} Apex Court observed-

"9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, 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 breadearner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

9. The settled law has been further succinctly elucidated in *MGB Gramin Bank v. Chakrawarti Singh* (2014) 13 SCC 583 supra wherein it was observed that -

"6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years."

10. The above consistent view has been reiterated in various judgments by the Hon^{ble} Apex Court and particularly in *Umesh Kumar Nagpal v. State of Haryana* (1994) 4 SCC 138, *Sanjay Kumar v. State of Bihar* (2000) 7 SCC 192, *State of Manipur v. Mohd. Rajaodin* (2003) 7 SCC 511, *Sail v. Madhusudan Das*, (2008) 15 SCC 560.

11. Having considered the scope and keeping in view the object of compassionate appointment, we would now advert to question (i) the effect of "Government Resolution, General Administration Department, No. Comp. 1093/2335/M. No.90/93/Eight, dated 26.10.1994 and effect of Clause (3)(a) and question (iv) the effect of subsequent policy decision dated 26.02.2013 taken by the State Government as per which the married daughter is also eligible to get compassionate appointment.

12. Clause 3 of Government Resolution dated 26-10-1994 relates to an application to be submitted by the family members of the deceased in accordance with the revised guidelines. Clause 3(a) of the guidelines reads as under -

"3 (v) & fnoaxr@vdkyh fuo`Rr "kkldh; deZpk&kaph ifr@iRuh] eqyxk fdaok vfookfgr eqyxh vFkok e`R;qiwohZ@ vdkyh lsokfuo`Rrh iwohZ dk;ns"khj jhR;k

nRrd ?ksrysyk@?ksrysyh eqyxk@vfookfgr eqyxh gh fu;ekuqlkj use.kqdhI ik= ukrsokbZd eku.;kr ;srhy0 ;kf"kok; vU; dqBY;kgh ukrsokbZdkl ;k ;kstuspK Qk;nk feG.kkj ukgh0"

13. From Clause 3(a) of 1994 Government resolution (supra) it is crystal clear that an unmarried daughter was eligible for compassionate appointment. Thereafter State Government has taken a policy decision dated 26-02-2013 and guideline 3(a) in 1994 Government Resolution came to be modified to the extent that in case family is dependent on a married daughter or married daughter is the only issue she is eligible for compassionate appointment. By subsequent Government Resolution a change has been brought to enable the family in which daughter is the only issue and family is dependent on her. This is with a specific purpose to tide over the sudden crisis due to death of the earning member of the family.

14. In the present case Ukarda died on 18-06-1997. Petitioner was married in 2000. According to her, her mother moved an application for her on 29-12-1997 and she submitted an application in prescribed form on 19-03-1998. If this is so petitioner was governed by Government Resolution dated 26-10-1994 Clause 3(a) and not by the subsequent Government Resolution dated 26-02-2013. In our considered view Government Resolution dated 26-02-2013 would not have retrospective effect as the State Government took the policy decision on 26-02-2013 and the same was given effect from the date of decision.

15. This takes us to other two questions viz(ii) the plea that the appellant submitted application on 29.12.1997 and 19.03.1998, that the same was not considered by the authorities for quite sometime and (iii) at the time when the applications for compassionate appointment was considered in 2012 whether 3rd respondent was eligible to be considered.

16. It is the case of petitioner that her mother Shantabai submitted an application on 29-12-1997 stating that her daughter was 17 years old and on her attaining majority she may be appointed on compassionate ground. According to petitioner on 19-03-1998 after she attained majority she submitted an application in the prescribed form to respondent no.2. Respondent no.2 has categorically denied having received such applications. In affidavit cum reply respondent no.2 in paragraph 4 submitted that for the first time Corporation received an application from respondent no.3 on 25-05-2009 and no other application by petitioner or her mother for compassionate appointment was available in the office record.

17. In this connection Mr. Asole, learned Counsel for petitioner submitted that copy of application dated 29-12-1997 has been received by petitioner under Right to Information Act and copy of later application dated 19-03-1998 is not received by her from respondent no.2. This Court vide order dated 04-07-2016 granted time to the parties to verify whether application dated 19-03-1998 reached the office of respondent no.2. On 18-07-2016 learned Counsel for

petitioner and respondent no.2 informed that no application like application dated 19-03-1998 is available on records of Municipal Corporation. Petitioner has not established that application dated 19-03-1998 was received by the office of respondent no.2. Application dated 29-12-1997 was by mother of petitioner. On attaining majority till 2012 petitioner did not make any representation for appointment on compassionate ground. If really family was in distress petitioner would not have remained silent till 2012. We therefore find that application dated 29-12-1997 by mother though received by the office of respondent no.2 was not enough to process the claim of petitioner particularly in the absence of any effective step at her end on attaining majority. Compassionate employment cannot be claimed as a matter of right as it is not a vested right. Such appointment is to be provided immediately to redeem the family in distress. Inaction on the part of petitioner for 14 long years clearly indicate that family was not in distress and petitioner was not in need of immediate employment.

18. So far as Respondent no.2 is concerned he is the son of Ukarda from his second wife Kuntabai. He gave an application for compassionate appointment on 25-05-2009. Petitioner raised objection on 19-04-2012. Considering the application and objections raised by petitioner respondent no.3 was appointed by order dated 18-09-2012. By the same order petitioner was declared ineligible for compassionate appointment as she got married. It is pertinent to note that till respondent no.3 submitted an application to respondent no.2 petitioner did not approach the Authority and it was only after respondent no.3 moved an application she raised an objection. Petitioner in her objection points out application dated 29-12-1997 moved by her mother. Surprisingly, she does not mention application dated 19-03-1998 allegedly moved by her after reaching majority. Had her family been in distress and need of support, there would have been number of representations after 19398 by her. Facts show that she woke up only in 2012. This casts cloud on her conduct.

19. Petitioner got married in 2000. It is not her case that after marriage she stayed with her mother or her mother was solely dependent on her. In the absence of any timely action on the part of petitioner we find that no factual error was committed by respondent no.2 in appointing respondent no.3 on compassionate ground. However we do not appreciate the action of respondent no.2 ignoring an important aspect of law that after a lapse of considerable period compassionate employment cannot be granted.

20. We have also perused the judgment dated 15-01-2005 delivered in Regular Civil Suit No.40 of 2001 by learned Civil Judge, Junior Division, Anjangaon Surji. The suit was filed by petitioner and her mother Shantabai against second wife Kuntabai and her two sons. The suit was for declaration of the status of plaintiffs as legal heirs of deceased Ukarda having right in the property, pension and funds of the deceased. Respondent no.3 was defendant no.2 in the said suit. Civil Court held defendants 2 and 3 also as legal heirs of deceased Ukarda. While recording the reasons for appointment of respondent no.3, Authority had stated that

petitioner being married daughter was not eligible for compassionate appointment and so respondent no.3 being the legal heir of Ukarda was considered for such appointment.

21. In the above premise we find that in 2012 respondent no.3 was eligible to be considered and petitioner being governed by previous Government Resolution was not eligible for compassionate appointment. We did not notice any perversity, illegality or incorrectness in the impugned order.

22. Hence, Writ Petition is dismissed. No order as to costs. Rule is discharged.