



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6891 OF 2024

Anand s/o Balasaheb Deshmukhh ... **Petitioner**
Age 24 years, Occu: Education
R/o Asardoh Tq. Dharur Dist. Beed

VERSUS

1. The State of Maharashtra,
Through its Chief Secretary,
General Administrative Department,
Mantralaya, Mumbai
2. The Secretary, ... **Respondents**
Law and Judiciary Department,
Mantralaya, Mumbai.
3. The Competent Authority and the
Hon'ble the Chief Justice,
High Court of Judicature of Bombay
Through its Registrar General, Mumbai.
4. The Principal District Judge,
Beed.

Mr. U. L. Telgaonkar, Advocate for Petitioner,
Mr. A. B. Girase, Government Pleader for Respondents Nos. 1 & 2,
Mr. C.K. Shinde, Advocate for Respondent Nos. 3 and 4.

CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRAGADE, JJ.

RESERVED ON : 08.07.2024

PRONOUNCED ON : 18.07.2024

JUDGMENT (Per: Y. G. Khobragade, J.)

1. Rule. Rule made returnable forthwith and heard finally by
consent of the parties at the stage of the admission.

2. By the present petition under Article 226 of the Constitution of India, the Petitioner has put forth prayer clause 'B' as under:

"B. By issuing writ of Mandamus or any appropriate writ, order or direction in the like nature, to direct the respondents to provide employment to the Petitioner on compassionate ground."

3. In nutshell, facts giving rise to this petition are that Smt. Suman Balasaheb Deshmukh, who is the mother of the Petitioner was appointed as a Junior Clerk at the establishment of Respondent No. 4 on 12-10-1987. She was posted at District Court Ambejogai, District Beed. She was holding post of group "C" cadre. Petitioner's mother (Smt. Suman Balasaheb Deshmukh) died on 23-12-2007 in a road accident. According to the Petitioner her mother was the only bread earner in his family. He, his father and grandparents were dependent on the income of his mother. His father is a casual labour and above age of 48 years. At the time of death of his mother, he was 7 years old, therefore, being minor, he was not eligible to apply for employment immediately after the death of his mother and he was also taking education by that time. Petitioner obtained degree of B. Sc., Computer Science in 1st Division and simultaneously, he has completed technical courses viz., (i) Course of C-Language (Computer), (ii) M.S.C.I.T., (iii)

English Typing 40 W.P.M. and (iv) Marathi Typing 30 W.P.M. Therefore, after attaining the age of majority, on 29.09.2021, he submitted an application with Respondent No. 4 and thereby prayed for grant of appointment on the compassionate ground, however, Respondent No. 4 issued the impugned communication dated 15th May, 2024 and rejected the request of the Petitioner on ground that, the application is not filed within the limitation of one year from the date of death of employee.

4. The learned counsel for the Petitioner canvassed in vehemence that the Scheme of appointment on compassionate ground has been framed with aim and object to tide over a sudden financial crisis on all of sudden death of employee on 23-12-2007, however, at the time of death of Petitioner's mother, the Petitioner was 7 years old and after attaining the age of majority on 13th September, 2018, the Petitioner submitted an application on 29.09.2021 (after 3 years). It is further canvassed that, the Petitioner acquired essential educational and technical qualifications required for the post consistent with the requirement of maintenance of efficiency in administration of Respondent No. 4, however, Respondent No. 4 rejected the Petitioner's application on sole ground that, application is not filed within the limitation of one year from the date of death of the employee.

Therefore, impugned order is illegal, bad in law as well as contrary to Scheme providing compassionate appointment, hence, prayed to quash and set aside the same.

5. Per contra learned Government Pleader and learned counsel appearing for the Respondent Nos. 3 and 4 submit that, the Petitioner's mother died on 23rd December, 2007. Thereafter, the Petitioner submitted an application on 29th September, 2021, after lapse of more than 13 years. The Petitioner's date of birth is 13th September, 2000 and he attained the age of majority on 12th September, 2018 itself, however, the Petitioner has not submitted the application seeking appointment on compassionate basis within the period of 2 years from the date of attaining the age of majority as per Rule 10 of the Bombay High Court Revised Guidelines For Appointment On Compassionate Ground, 2007. Therefore, Respondent No. 4 issued the impugned communication along with letter dated 10th May, 2024 issued by the Registrar (Personnel), High Court, Bombay and rejected the application of the Petitioner, which is just and proper, hence, prayed for dismissal of the Petition.

6. It is not in dispute that, on 12.10.1987, the Petitioner's mother, Smt. Suman Balasaheb Deshmukh was appointed as a Junior Clerk at the establishment of Respondent No. 4 and she was posted at

District Court Ambejogai, District Beed. On 23.12.2007, the Petitioner's mother died in a road accident. The Petitioner is seeking appointment on the compassionate ground due to death of his mother after 13 years and 9 months. The Petitioner has furnished his qualification certificates, which indicates that Petitioner's date of birth is 13th September, 2000, therefore, the Petitioner has attained the age of majority i.e. 18 years on 12th September, 2018.

7. Needless to say that, Respondent No. 4 does not have independent Rules in respect of providing appointment on compassionate ground. Though, Respondent No. 4 requires to follow provisions of Civil Manual, however, it does not contemplate for providing such appointment on compassionate ground. Respondent No. 3 has framed Revised Guidelines for Appointment on Compassionate Ground, 2007, which came into force w.e.f. 1st January, 2007. Therefore, the Petitioner's prayer for appointment on compassionate ground is governed under said Rules because, the date of death of Petitioner's mother is 23.12.2007.

8. Rule 10 of the Bombay High Court revised Guidelines For Appointment on Compassionate Ground, 2007 provides as under:

10. Limitation for making request for compassionate appointment:

"Application for appointment on compassionate ground shall be made within one year of death in harness, however, in a suitable case the Honourable the Chief Justice may consider request for Compassionate appointment made after 1 year up to 2 years after the death of a Judicial Employee."

9. According to Petitioner, his mother was the only bread earner in his family. He, his father and grandparents were dependent on income of his mother. His father is a casual labour and is above the age of 48 years and he was 7 years old at the time of death of his mother, therefore, being minor, he was not eligible to apply for employment immediately after the death of his mother and he was pursuing education. The Petitioner obtained the degree of B. Sc., Computer Science in 1st Division and simultaneously he has completed technical courses viz., (i) Course of C-Language (Computer), (ii) M.S.C.I.T., (iii) English Typing 40 W.P.M. and (iv) Marathi Typing 30 W.P.M. Therefore, after attaining the age of majority, on 29-09-2021, he submitted an application with Respondent No. 4 and thereby prayed for grant of appointment on the compassionate ground, however, Respondent No. 4 issued the impugned communication dated 15th May, 2024 and rejected the request of the Petitioner on ground that the application is not filed within period of one year from the day of death of employee.

10. In case of *Ahmednagar Mahanagar Palika V/s. Ahmednagar Mahanagar Palika Kamgar Union; (2022) 10 SCC 172* and in case of *The State of West Bengal V/s. Debabrata Tiwari & Ors.; 2023 (5) Mh.L.J. 156 (SC)*, Hon'ble Supreme Court has held that the object of granting compassionate employment is to tide over a sudden crisis and application for grant of appointment on compassionate basis should not be considered after a prolonged delay. The sense of urgency should not be lost and entertaining a claim after 17 years would be of no avail. Hence, relief in such cases would be improper.

11. In the year 2019, The Bombay High Court has revised the guidelines for appointment on compassionate ground. Rule 10 of the Revised Guidelines, 2019 provides as under:

10. Limitation for making request for compassionate appointment:

“Application for appointment on compassionate ground shall be made within one year of death of the employee in harness. However, in a suitable case the Chief Justice may consider request for Compassionate appointment made after 1 year up to 2 years after the death of the employee.

Provided that if the eligible dependent family member of the deceased includes son or daughter, the time for making application for compassionate appointment would be one year from the date, the eldest of the children of the employee

attains the age of majority or, at the discretion of the family, the eldest son of the employee attaining the age of majority."

As such, the Petitioner was expected to make his application within 1 year after attaining the age of 18 years. However, he has done so after 3 years.

12. In the case of ***Malaya Nanda Shethy Vs. State of Orissa, AIR 2022 SUPREME COURT 2836***, Hon'ble Supreme Court has observed in Paragraph No. 9 as under:

"9. Before parting with the present order, we are constrained to observe that considering the object and purpose of appointment on compassionate grounds, i.e., a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications.

We are constrained to direct as above as we have found that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach the concerned High Courts seeking a writ of Mandamus for the consideration of their applications. Even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order of

rejection before the High Court which leads to pendency of litigation and passage of time, leaving the family of the employee who died in harness in the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. After several years or are not considered at all as in the instant case.

If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies or the Rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a tardy way. We have come across cases where for nearly two decades the controversy regarding the application made for compassionate appointment is not resolved. This consequently leads to the frustration of the very policy of granting compassionate appointment on the death of the employee while in service. We have, therefore, directed that such applications must be considered at an earliest point of time. The consideration must be fair, reasonable and based on relevant consideration. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only the object and purpose of appointment on compassionate grounds can be achieved.”

13. Indeed, the appointment of a candidate on compassionate basis does not create any vested right and that it is only when a candidate is covered under all clauses of the scheme applicable at the relevant point of time that he/she could be considered for appointment on compassionate basis. In the case of ***SBI Vs. Kunti Tiwary, (2004) 7 SCC 271***, Hon'ble Supreme Court has held that when the family of deceased employee is in penury and without any source of livelihood ,

the employee died in harness, then in such cases compassionate appointment can be considered. Since appointment on compassionate basis is an exception to the general rule of appointment by an open invitation, the exception has to be resorted to only when the candidate and his family is in penury so as to provide immediate aid on the death of the employee in harness. Further, in the case of ***State of H.P Vs. Shashi Kumar, (2019) 3 SCC 653***, it was observed that compassionate appointment being an exception to the general rule, the dependents of deceased government employee are made eligible by virtue of the policy of compassionate appointment, and they must fulfill the terms of the policy which are framed by the State/Employers.

14. Further, in the case of ***Fertilizers and Chemicals Travancore Ltd. & others Vs. Anusree K. B., AIR 2022 SC 4766***, the daughter of deceased employee sought compassionate appointment after lapse of 24 years from the death of the deceased under this circumstance, Hon'ble Supreme Court has held in Paragraph No. 9 as under:

“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 dependents 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 herein-above 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.

9.2. Under the circumstances, both, the learned Single Judge as well as the Division Bench of the High Court have committed a serious error in directing the Appellants to reconsider the case of the Respondent for appointment on compassionate ground. The impugned judgment and order passed by the High Court is unsustainable.”

15. In the case in hand, it is apparent that the Petitioner's mother died on 23.12.2007 in a road accident. Though, the Petitioner has attained the age of majority on 12th September, 2018 he has failed to submit an application seeking appointment on compassionate basis

within a period of two years as contemplated under amended Rule 10 of the Revised Guidelines, 2007.

16. Further, the Petitioner has disclosed the detail about receipt of the service/death benefits of his mother, in the application form as under:

(a)	Family Pension	Rs.3525/- per month
(b)	Death-cum-retirement Gratuity	Rs.141,000/-
(c)	Provident Fund	Rs. 83,893/-
(d)	Deposit linked insurance scheme.	Rs.60,000/-
(e)	Group Insurance Scheme	Rs.16,798/-
(f)	Compensation in Motor Accident Claim	Rs.14,00,000/-

The Petitioner has also disclosed that at the time of death of his mother, his father was 48 years old and he was drawing agricultural income to the tune of Rs. 40,000/- per year. Therefore, it shows that the Petitioner and his family were not facing financial crises due to the death of his mother, for the period of more than 13 years.

17. As per proviso to Rule 10 of Revised Guidelines, 2019, the eldest child of deceased employee who attained the age of majority or at the discretion of the family, the eldest son of the deceased employee attaining the age of majority is held eligible being dependent family member of the deceased employee, for appointment on compassionate

ground. However, the Petitioner has failed to submit the application seeking appointment on compassionate ground within a period of two years.

18. As per communication dated 10.05.2024, issued by the learned Registrar (Personnel) High Court of Bombay, rejected the claim of the Petitioner in view of Rule 10 of the Revised Guidelines, 2019. Therefore, we do not find that the impugned order suffers from any perversity or illegality. Hence, this Petition fails.

19. In view of the above, the Writ Petition is dismissed. Rule is accordingly discharged. No order as to costs.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan