

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.381 OF 2015**

**DISTRICT : PALGHAR**

Shri Rahul Laxman Sakpal, )  
R/o. Krushna Sparsh Bldg. No.7, )  
Ever Shine Garden, Vasai (W), )  
Dist. Palghar )

Address for Service of Notice :-

Shri A.V. Bandiwadekar, Advocate )  
Having office at 9, "Ram-Kripa", )  
Lt. Dilip Gupte Marg, )  
Mahim, Mumbai 400 016 )

**...APPLICANT**

**VERSUS**

The Commissioner / Director, )  
(Administration), )  
Employees State Insurance Scheme, )  
Having office at Panchdeep Bhawan, )  
6<sup>th</sup> floor, N.M. Joshi Marg, )  
Lower Parel, Mumbai 400 013 )

**....RESPONDENT**

Shri A.V. Bandiwadekar, learned Counsel for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent.



CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 22.04.2016.

### J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, learned Counsel for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent.

2. This O.A. has been filed by the Applicant, challenging the order dated 07.05.2015 issued by the Respondent rejecting the request of the Applicant dated 03.05.2013 for compassionate appointment, in place of his mother who died on 11.04.2013, while in service as Group 'D' employee.

3. Learned Counsel for the Applicant argued that the Applicant's mother was in service on 11.04.2013 as Ward-Attendant in Employees State Insurance Scheme, Hospital, Kandivali, Mumbai. The Applicant's father was also working as ward-boy on the establishment of the Respondent and retired on 31.12.2012, on attaining the age of superannuation before the death of his mother. Learned Counsel for the Applicant argued that the Applicant was fully eligible to be considered for compassionate employment, as no one in the family was working with the Government when his mother died on 11.04.2013 while in service. On that date his father had already retired. The Respondent has relied on para 7(b) of Annexure-A of G.R. dated 26.10.1994 stating that the Applicant's father is drawing pension and the Applicant ~~has~~ ~~no source of income~~ and the family is not left in indigent


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circumstances. Learned Counsel for the Applicant stated that during the pendency of this O.A. his father has expired on 11.12.2015 and the Applicant is now not getting any family pension, as he has crossed the age of 21 years. Learned Counsel for the Applicant argued that the Applicant may be considered fully eligible for compassionate appointment. Learned Counsel for the Applicant relief on judgment on Hon'ble Bombay High Court dated 01.08.2011 in W.P.No.1284 of 2011.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent that the family pension due to Applicant's mother and his father's pension together come to Rs.20,400/- per month. The Applicant is, therefore, not eligible for compassionate appointment in terms of para 7(B) of the G.R. dated 26.10.1994.

5. It is seen that the Applicant's father was alive when the Applicant had applied for compassionate appointment after the death of his mother. The Applicant's father was getting his pension and also family pension on account of death of his wife. The total amount was around Rs.20,400/- per month. Now the Applicant's father has also expired. His age is more than 21 years, and he is not eligible to get any family pension. His present income appears to be nil. The Applicant has cited that judgment of Hon'ble Bombay High Court. In that case also, compassionate appointment was denied to the Petitioner on two counts viz :



- (a) The Applicant, who was a daughter of deceased Government servant got married, during the period when her name was in the waiting list for compassionate appointment, and
- (b) Her mother, widow of deceased Government servant, was getting family pension, and both her daughters were married and she was not in indigent circumstances.

Hon'ble High Court has observed that the fact that widow of a deceased Government servant was getting family pension has no bearing on compassionate appointed. Hon'ble High Court has observed that :

*"7. Reverting to the first reason mentioned in the impugned communication, we fail to understand as to how that ground can be said to be germane for rejecting the request of the petitioner to appoint petitioner no.1 on compassionate ground. If that logic was to be upheld, it would necessarily follow that even other eligible family members (referred to in the Government Resolution) of the deceased employee, would become ineligible for appointment on compassionate ground. In that, even in the case of other family members such as son, unmarried daughter, widow, the same reason would be attracted, which would result in marking the scheme of appointment as compassionate ground, such as clause 3(a) of Government Resolution dated 26<sup>th</sup> October, 1994 being otiose. Suffice, it to observe that the fact that family pension is being received by the widow or other eligible family members of the deceased employee can be no basis to deny them the benefit of appointment on compassionate ground. That concession is in addition to the relief of family pension, which is essential, intended to meet the immediate financial hardship suffered by the member of*

*the family due to sudden demise of the deceased employee”.*

6. It is quite clear that the fact that father of the Applicant was receiving family pension due to death of his mother, cannot be a basis to deny the compassionate appointment to the Applicant. Similarly, the Applicant in his application has disclosed the fact that the pension being received by his father was inadequate to maintain the family, as his father was suffering from various ailments and was required to spend Rs.3 to 4 thousand every months on his medicines. Considering all these facts, it is difficult to hold that the Applicant was ineligible to be given compassionate appointment in view of para 7(B) of the Annexure-A of G.R. dated 26.10.1994. The Applicant's father expired shortly thereafter and now the Applicant does not have any source of income.

7. Having regard to the aforesaid facts and circumstances of the case, order dated 07.05.2015 passed by the Respondent is quashed and set aside. The Respondent is directed to consider the Applicant for compassionate appointment in his turn. This O.A. is allowed accordingly with no order as to costs.

  
**(RAJIV AGARWAL)**  
**VICE-CHAIRMAN**

**Place : Mumbai**  
**Date : 20.04.2016**  
**Typed by : PRK**