

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1056 OF 2022

DISTRICT : KOLHAPUR

Sub.:- Compassionate Appointment

Shri Taoufik Sharif Mullani.)
Age : 33 Yrs, Occu.: Nil,)
R/o. 22/29, E-Ward, Sankpal Nagar,)
Kasaba Bawada, District : Kolhapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Secretary,)
General Administrative Department,)
Mantralaya, Mumbai – 400 032.)
2. Additional State Tax Commissioner,)
Pune, 4th Floor, Sales Tax Bhavan,)
Airport Road, Yerawada,)
Pune – 411 006.)
3. Additional State Tax Commissioner,)
Kolhapur, G.S.T. Bhavan, 2nd Floor,)
Kasaba Bawada, District : Kolhapur.)
4. Joint State Tax Commissioner,)
Kolhapur, G.S.T. Bhavan, 2nd Floor,)
Kasaba Bawada, District : Kolhapur.)
5. The District Collector, Kolhapur,)
Having Office at Swaraj Bhavan,)
Nagala Park, Kolhapur.)...**Respondents**

Mr. Yuvaraj Gharat, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 21.03.2023

JUDGMENT

1. The Applicant has challenged the communication dated 17.02.2022 issued by Respondent No.3 - Additional State Tax Commissioner, Kolhapur thereby rejecting his claim for substitution of his name in waiting list for issuance of compassionate appointment.

2. Briefly stated following are uncontroverted facts to be borne in mind while deciding the O.A.

- (i) Applicant's father viz. Sharif Mulani was Peon on the establishment of Respondent No.3 and died in harness on 09.07.2004 leaving behind widow Smt. Noorjaha, 2 daughters and 1 son Taoufik (present Applicant).
- (ii) Smt. Noorjaha made an application on 01.09.2004 for compassionate appointment to the Applicant, who was that time 16 years' old. In application, she further stated that after attaining majority again he will submit application afresh, but her claim be kept reserved.
- (iii) Thereafter, Smt. Noorjaha again made an application on 07.01.2005 claiming compassionate appointment for himself and in pursuance of it, Respondent No.2 - Additional State Tax Commissioner, Pune by his letter dated 07.06.2006 requested Collector, Kolhapur to take his name in common waiting list maintained at his level. In the said communication, he stated that the name of Smt. Noorjaha is already taken in waiting list of his Department (Page No.24 of P.B.).
- (iv) Respondent No.3 - Additional State Tax Commissioner, Kolhapur by communication dated 06.04.2012 informed to the Applicant that inadvertently, her name was remained to be entered in waiting list of the Department, but further

informed that Smt. Noorjaha had already attained 40 years of age on 03.02.2006, and therefore, she was not eligible for compassionate appointment in terms of G.R. dated 22.08.2005.

- (v) Thereafter, Applicant applied on 10.02.2012 for compassionate appointment to him which came to be rejected by Respondent No.3 by communication dated 03.11.2012.
- (vi) Instead of challenging the communication dated 03.11.2012 by availing proper legal remedy, the Applicant again made representation to Respondent No.3 on 09.06.2014 for compassionate appointment which was rejected on 13.06.2016 but thereafter, did not take any steps in pursuance of it.
- (vii) The again, Applicant applied afresh on 03.12.2021 for compassionate appointment (Page No.41 of P.B.) and it came to be rejected by communication dated 17.02.2022 stating that since Applicant's mother had already crossed 40 years of age on 02.02.2006, she was not entitled for compassionate appointment and there is no provision for substitution of name in the scheme.

3. It is on the above background, the Applicant has filed the present O.A. challenging the communication dated 17.02.2022 *inter-alia* contending that the rejection of claim on the ground of absence of provision for substitution is arbitrary and unsustainable in law.

4. Shri Yuvaraj Gharat, learned Advocate for the Applicant sought to contend that though Applicant's mother applied for compassionate appointment on 07.01.2005 (within one year) from the date of death of husband), factually, the name was not entered in waiting list. But thereafter, she having crossed 40 years of age, she was informed that her

claim is not maintainable. Adverting to this aspect, he tried to contend that there is failure on the part of Respondents to take her name in waiting list, and therefore, Respondents cannot take plea that she had become age-barred in terms of G.R. dated 25.08.2005. As regard substitution, he sought to place reliance on the decision of Hon'ble High Court, Bench at Aurangabad in ***Writ Petition No.6267 of 2018 [Dnyaneshwar R. Musane Vs. State of Maharashtra & Ors.] decided on 11.03.2020*** in which Hon'ble High Court held that the restriction imposed by the G.R. dated 20.05.2015 that if name of one legal representative of deceased employee is in the waiting list, then that person cannot request for substitution of name of other legal representative of deceased employee is unjustified and it is directed to be deleted. On this line of submission, learned Advocate for the Applicant submits that considering the aim and object of the scheme for compassionate appointment, the application made by Applicant on attaining majority ought to have been considered and her name should have been entered in the waiting list, but Respondent No.3 rejected the application arbitrarily.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer submits that Applicant had attained 18 years of age on 28.06.2007, but he applied for compassionate appointment after lapse of 5 years i.e. on 10.02.2012 and it came to be rejected on 03.11.2012, but Applicant did not challenge the said communication. Then again, Applicant applied on 09.06.2014 which was rejected by communication dated 13.06.2016 which was also not challenged by the Applicant and then again, he applied on 03.12.2021 which came to be rejected by communication dated 17.02.2022 which is impugned in the present O.A. Adverting to this aspect, he submits that subsequent communication dated 17.02.2022 will not give fresh cause of action to the Applicant and O.A. is barred by limitation. On this line of submission, he further submits that there are lapses and latches on the part of Applicant and he

remained silent for years together, which shows non-necessity of any such compassionate appointment.

6. In view of pleadings and submissions, the issue posed for consideration is whether impugned communication dated 17.02.2022 suffers from any legal infirmity and/or Applicant is entitled for compassionate appointment.

7. The facts of the matter as narrated above are not in dispute. Initially, Applicant's mother Smt. Noorjaha made an application on 01.09.2004 claiming compassionate appointment for Applicant who was that time minor, and therefore, obviously no further steps were taken by the Department in that behalf. As per scheme for compassionate appointment, if there is no other eligible family member, then minor can apply for compassionate appointment after attaining majority within a period of maximum three years, subject to condonation of delay by the Department. Insofar as claim raised by the Applicant after attaining majority is concerned, it will be dealt with a little later. At this juncture worth to note subsequently, Applicant's mother applied on 07.01.2005 claiming appointment for herself and in pursuance of it, her name was to be taken in waiting list, but it appears that actually, her name was not entered in the waiting list due to inadvertence of concerned. There is clear admission to that effect in Affidavit-in-reply that name was not included in the waiting list maintained by the Department due to mistake of the Clerk. However, this issue pales into insignificance, since admittedly, Applicant's mother crossed 40 years of age on 02.02.2006 thereby rendering her eligible for compassionate appointment and even of her name was in waiting list, it was required to be deleted. Indeed, by communication dated 15.06.2012 (Page No.34 of P.B.), it was communicated to the Applicant that since she has crossed 40 years of age, she is not ineligible for compassionate appointment. Admittedly, Applicant's mother did not challenge the communication dated

15.06.2012 by availing appropriate legal remedy. As such, that issue had attained finality.

8. In the meantime, Applicant for the first time made an application on 10.02.2012 for compassionate appointment (Page No.25 of P.B.) and it was rejected by communication dated 03.11.2012 (Page No.35 of P.B.). However, Applicant did not challenge that communication by availing legal remedy. Instead of challenging the said communication, he again applied for compassionate appointment on 09.06.2014, which was again rejected by communication dated 13.06.2016 and it was communicated to the Applicant, as seen from impugned order dated 17.12.2022. That time also, he did not avail any legal remedy so as to challenge the communication dated 13.06.2016. He went on making application one after other and again applied on 03.12.2021, which was rejected by communication dated 17.12.2022 is now challenged in the present O.A.

9. Thus, what transpires from the record that after attaining majority though application was required to be made within maximum period of three years, subject to condonation of delay by the Department, it was made firstly on 10.02.2012 though he had attained majority on 28.06.2007. His date of birth is 28.06.1989. Thus, his first application itself was made after five years on attaining majority. It was rejected on 03.11.2012, but that communication was not challenged. He went on making application one after other and his last application dated 03.12.2021 was rejected by impugned communication. It is thus evident that Applicant has not availed legal remedy within the period of limitation though he had got cause of action in view of rejection dated 03.11.2012 and later again on 13.06.2016. It is well settled that mere making representations one after other would not extend the period of limitation. Once Applicant got cause of action, he ought to have availed legal remedy, but he slept over his right.

10. Applicant's father died on 09.07.2004 and now period of almost two decades is over. There has to be proximity in the claim for compassionate appointment and where claimant remained silent for two decades and family survives, it necessarily suggests that there was no such need for grant of compassionate appointment. The compassionate appointment has to be in terms of scheme prepared by the employer and if it does not fall within the parameters of the scheme, it cannot be granted after lapse of two decades. It is well settled that compassionate appointment cannot be granted as a matter of right but it is by way of concession to the family who is in distress on account of death of sole earning member and there should not be endless compassion. As such, need to have compassionate appointment did not really exist in view of inaction and lapses on the part of Applicant.

11. At this juncture, it would be apposite to refer the decision of the Hon'ble High Court delivered in **W.P. No.43/2020 in Sau. Aarti P. Nimje V/s State of State of Maharashtra & Ors.**, decided on 06.12.2021 wherein the Hon'ble High Court summarized the legal principles to be borne in mind while considering the claim for compassionate appointment. In that case also the claim was made after 23 years from the death of deceased Government servant and it came to be rejected on the ground of inordinate delay. The legal principles summarized in the said decision are as under :-

“a) Public employment in offices or posts under the State or its instrumentalities or any other authority covered by Article 12 of the Constitution must be in accordance with Articles 14 and 16 of the Constitution, meaning thereby that appointment must be preceded by an invitation to the public for offering one's candidature for consideration, providing equal opportunities to each of the applicants to participate in the process and subject to fulfillment of the eligibility criteria, selection on the basis of merit.

b) Appointment based solely on descent is inimical to the Constitutional scheme.

c) Appointment on compassionate ground, which is offered on humanitarian grounds, is an exception to the above rule of equality in the

matter of public employment. However, compassionate appointment is not permissible in the absence of any scheme therefor.

d) None can claim compassionate appointment, on the occurrence of death/medical incapacitation of the concerned employee (the sole bread earner of the family), as if it were a vested right, and any appointment without considering the financial condition of the family of the deceased is legally impermissible.

e) The whole object of granting compassionate employment by an employer being intended to enable the family members of a deceased/incapacitated employee to tide over the sudden financial crisis, appointments on compassionate ground should only be made in exceptional cases to save the family of the deceased/incapacitated staff from destitution where, but for such appointment, they would not survive.

f) An application for compassionate appointment has to be made immediately upon death/incapacitation and in any case within a reasonable period thereof or else a presumption could be drawn that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. Such appointment not being a vested right, the right to apply cannot be exercised at any time in future and it cannot be offered whatever the lapse of time and after the crisis is over.

g) Compassionate appointment can only be made on Group C and Group D posts.

h) Satisfaction that the family members have been facing financial distress and that an appointment on compassionate ground may assist them to tide over such distress is not enough; a dependent must fulfil the eligibility criteria for appointment.

i) A decision on an application for compassionate appointment ideally ought to be made within a given time or else the object of such appointment might be frustrated.

j) The idea of compassionate appointment is not to provide for endless compassion.

k) The object of compassionate employment is not to give a member of a family of the deceased employee a post much less a post for post held by the deceased.

l) Compassionate employment cannot be granted after lapse of reasonable period, which must be specified in the scheme.

m) There cannot be reservation of a vacancy till such time as the applicant becomes a major after a number of years, unless there are some specific provisions.

n) Compassionate employment being an exception to the general rule, the scheme therefor has to be strictly construed and confined only to the purpose it seeks to achieve.

o) Compassionate employment is permissible to one of the dependents of the deceased/incapacitated employee.

p) An appointment on compassionate ground made many years after the death/incapacitation of the employee or without due consideration of the financial resources available to the dependant of the deceased/incapacitated employee would be directly in conflict with Articles 14 and 16 of the Constitution.

q) Although administrative process might result in delay in disposal of the pending claims under the scheme either due to non-availability of vacancies or if other eligible candidates are in the queue ahead of the concerned applicant waiting for appointment, for which appointment may not be offered to an applicant immediately upon death/incapacitation, the date of the application for appointment in particular cases might have some bearing on the right claimed having regard to the object of the scheme.

r) Irrespective of the time taken for offering compassionate appointment, rejection of a claim for compassionate appointment on the ground that the family members of the deceased/incapacitated employee are not in financial distress cannot be followed by an application by a different dependent.

s) Having regard to the fixation of minimum and maximum age by an employer answering the definition of State within the meaning of Article 12 of the Constitution for entering service, it is axiomatic that while an over-aged dependent cannot seek appointment, even an under-aged dependent cannot also seek such appointment.

t) It is only in rare cases, if provided by the scheme for compassionate appointment and not otherwise, that a dependent who was a minor on the date of death/incapacitation, can be considered for appointment upon attaining majority.

u) Having regard to the object of compassionate appointment, time frame fixed in the schemes for making an application ought to be considered mandatory unless of course a different intention appears from a reading of the scheme.

8. It would appear from the above that principles (e), (f), (l), (m), and (p) are squarely applicable in the present case. Compassionate appointment cannot be offered after lapse of substantial period of time since the death of the breadwinner for the family. By the time this writ petition came to be instituted, the family of the deceased had survived 23 (twenty-three) long years, which would suggest that there was no immediate need to make an appointment on compassionate ground. 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 writ petition.”

12. Reliance placed by learned Advocate for the Applicant on the decision of Hon'ble High Court in ***Dnyaneshwar Musane's*** case is totally misplaced and that decision is hardly of any assistance to the Applicant in the present facts and circumstances of the case. In that case, Primary Teacher serving in Z.P. died in harness on 06.09.2005. His widow applied for compassionate ground and her name was taken in waiting list. However, grand-parents of the Petitioner objected for giving appointment to her and proposed that appointment should be given to the Petitioner. That time, Petitioner was minor. Chief Executive Officer, Z.P. conducted hearing in 2013 and that time, Petitioner's mother gave up her claim for appointment on compassionate ground and requested that her son's name [Petitioner] be taken in waiting list. On becoming major, the Petitioner also submitted application seeking appointment on compassionate ground, but it was rejected on the ground that his name cannot be substituted in place of mother's name in terms of G.R. dated 20.05.2015 which lays down that the name of any legal representative of the deceased employee should not be substituted in place of any other legal representative in the list of persons seeking appointment on compassionate ground. It is in that factual situation, Hon'ble High Court allowed the substitution. Thus, apparently, Petitioner in that case made an application within the period of limitation after attaining majority. However, in the present case, facts are totally different. As stated above, Applicant made first application on 10.02.2012 after 5 years on attaining majority which was rejected on 03.11.2012, but it was not challenged. He went on making application one after other without availing legal remedy within the period of limitation. In such circumstances, the decision in ***Dnyaneshwar Musane's*** case is hardly of any assistance to the Applicant.

13. The totality of aforesaid discussion leads me to sum-up that Applicant is guilty of lapses, latches and slept over his right. The period of near about two decades from the date of death of Government servant is over, which is suggestive of the fact that need of compassionate

appointment does not survive. Had there any such need, the Applicant would have availed legal remedy challenging the orders passed against him, as narrated above. I have, therefore, no hesitation to conclude that the challenge to the impugned communication dated 17.02.2022 holds no water and O.A. is liable to be dismissed. Hence, the order.

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 21.03.2023

Dictation taken by :

S.K. Wamanse.

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