

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.422 OF 2018

DISTRICT : NASHIK

Smt. Bhagyashree R. Dhanaskar.)
Occu.: Nil, R/o. Room No.7, Agusti Row,)
Ashok Nagar, Sambhaji Nagar, Behind)
State Bank of India, Satpur, Dist : Nashik.)...**Applicant**

Versus

1. The Commissioner.)
Employees State Insurance Scheme,)
Having office at Panchdeep Bhavan,)
6th Floor, N.M. Joshi Marg,)
Lower Parel, Mumbai – 400 013.)
2. The Medical Superintendent.)
Employees State Insurance Scheme,)
Satpur, District : Nashik – 7.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Public Health Department,)
Mantralaya, Mumbai – 400 032.)...**Respondents**

Mr. Arvind A. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 11.03.2020

JUDGMENT

1. The Applicant has challenged the orders dated 29.04.2017 and 26.05.2017 whereby her claim for appointment on compassionate ground is rejected by the Respondents.

2. Uncontroverted facts necessary for the decision of the present O.A. can be summarized as under :-

(i) The Applicant Smt. Bhagyashree is daughter of deceased Smt. Mandakini, wife of Ramsad Dhanaskar who was Group 'D' employee on the establishment of Respondent No.2.

(ii) Smt. Mandakini died on 06.04.2008 in harness living behind Applicant (who was unmarried that time) and husband Ramdas as her legal representatives.

(iii) The husband of deceased Mandakini and father of Applicant viz. Ramdas was also in Government service on the post of Liftman on the same establishment i.e. Respondent No.2.

(iv) After the death of Smt. Mandakini, the Applicant made an application on 05.07.2008 for appointment on compassionate ground in place of her mother (Page No.21 of Paper Book).

(v) The application made by the Applicant on 05.07.2008 was rejected and it was communicated to the Applicant by letter dated 23.01.2009 on the ground that her father is already in Government service, and therefore, her case does not fall in terms of G.R. dated 26.10.1994. Accordingly, she was held ineligible for the appointment on compassionate ground (Page No.22 of P.B.).

(vi) However, the Applicant again made an application for appointment on compassionate ground on 05.01.2013 giving reference of decision of Hon'ble High Court in **Writ Petition No.1284/2011 (Aparna Zhambre Vs. Assistant Superintending Engineer) decided on 1st August, 2011** (Page No.30 of P.B.).

(vii) The Applicant's father viz. Ramdas stands retired from Government service on 30.06.2016.

(viii) In view of retirement of father, the Applicant again made representation on 16.08.2016 for appointment on compassionate ground (Page No.31 of P.B.).

(ix) The Respondents, however, rejected the claim of the Applicant by orders dated 29.04.2017 and 26.05.2017 on the ground that she is ineligible for appointment on compassionate ground in view of employment of her father at the relevant time.

3. On the above background and factual aspects, the Applicant has challenged the orders dated 29.04.2017 and 26.05.2017 in the present O.A.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned order on the ground that the Respondents have not made proper enquiry about financial condition of family and rejection of the claim for appointment on compassionate ground only on the ground that father was in service is totally unsustainable in law. He submits that the Respondents ought to have been considered that the father of the Applicant retired from service on 30.06.2016, and therefore, the application made by the Applicant on 16.08.2016 ought to have been considered

by the Respondents sympathetically so as to provide appointment on compassionate ground to the distressed family. He sought to place reliance on the decision of Hon'ble High Court in Writ Petition No.1284/2011 referred to above. On this line of submission, he prayed for direction to the Respondents to consider the name of the Applicant for appointment on compassionate ground.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer in reference to reply filed by the Respondents submits that the O.A. is devoid of merit. She made two-fold submission. Firstly, the application of the Applicant dated 05.07.2008 has been already rejected by letter dated 23.01.2009 which was not challenged by the Applicant within the period of limitation, and therefore, the present O.A. is barred by limitation. In second limb of submission, she submits that at the time of death of Smt. Mandakini, the father of the Applicant viz. Ramdas was very much in Government service on the post of Liftman, and therefore, the family consists of father and daughter cannot be said in financial distress, so as to appoint legal heir of the deceased on compassionate ground. She further submits that, admittedly, the Applicant got married on 25.11.2008 and living with her husband. On this line of submission, she submits that her 2nd application dated 05.01.2013 and 3rd application dated 16.08.2016 are accordingly rightly rejected and challenge to the impugned orders is devoid of merit.

6. In view of submission advanced, short question posed for consideration is whether the O.A. is within limitation and Applicant is eligible for appointment on compassionate ground.

7. As regard limitation, indisputably, the application made by the Applicant on 05.07.2008, which was within one year from the death of her mother, has been rejected by the Respondents and the same was communicated to the Applicant by letter dated 23.01.2009. The

receipt and service of this letter is not in dispute. Indeed, the Applicant herself admits receipt of order dated 23.01.2019 in her subsequent representation dated 16.08.2016 (Page No.31 of P.B.). As such, the claim made by the Applicant was rejected by order dated 23.01.2019 on the ground that her father Ramdas is already in Government service, and therefore, the Applicant is ineligible for appointment on compassionate ground. Admittedly, the order dated 23.01.2009 was not challenged by the Applicant and had attained the finality. As such, the cause of action first accrued to the Applicant on 23.01.2009 and she was required to challenge the said order by filing proceeding before this Tribunal within a period of limitation of one year as contemplated under Section 21 of Administrative Tribunals Act, 1985. However, no such proceedings are filed within prescribed period of limitation.

8. True, in the present case, the Applicant has not challenged the order dated 23.01.2009 but had challenged subsequent orders dated 29.04.2017 and 26.05.2017. Indeed, the letter dated 26.05.2017 is only communication on the basis of order dated 29.04.2017 passed by Respondent No.1 – Commissioner, Employees State Insurance Scheme, Mumbai. By these orders, subsequent representation made by the Applicant on 16.08.2016 is rejected with clarification that the Applicant was already held ineligible by order dated 23.01.2009. In order dated 29.04.2017, it is further stated that the Applicant is married daughter and her father being pensioner, she cannot be said entrusted with the liability of maintenance of family. The representation accordingly stands rejected. Needless to mention that subsequent representation and order passed thereon will not revive the cause of action nor it will extend the period of limitation for which cause of action was accrued to the Applicant on 23.01.2009. Suffice to say, the O.A. is hit by law of limitation.

9. Even assuming for a moment that the Applicant has got fresh cause of action by order dated 29.04.2017, in that event on merit also, the impugned order can hardly be questioned.

10. It is well settled that the appointment on compassionate ground cannot be claimed as a matter of right. The object of provide appointment to the legal heirs of deceased who died in harness is to obviate the financial difficulties of the family of the deceased by providing employment to one of the legal heir of the deceased so that such bereaved family should survive with financial assistance. Suffice to say, the object behind appointment on compassionate ground is to provide appointment where the family is in distress cause of loss of sole earning member of the family. Turning to the facts of the present case, admittedly, when Smt. Mandakini died on 06.04.2008, her husband Ramdas was in Government service on the post of Liftman. Thus, after the death of Mandakini, the family was survived by her husband viz. Ramdas (father of Applicant) and Applicant who was unmarried. The Applicant made an application on 05.07.2008 for appointment on compassionate ground which was examined by the Department in terms of G.R. dated 26.10.1994 and found that as the Applicant's father Ramdas was already in Government service, she is not eligible for the appointment, as the family cannot be said in distress.

11. By G.R. dated 26th October, 1994, the detailed instructions were issued for the scrutiny of application made by legal heir of the deceased to find out whether providing of appointment on compassionate ground is necessary in the facts and circumstances of the case. Clause No.7 of G.R. dated 26.10.1994 is material (Page No.25 of P.B.) which is as follows :-

“७. (अ) अनुकंपा नियुक्तीकरीता मासिक उत्पन्नाची तसेच ठोक रकमेची मर्यादा यापुढे राहणार नाही.

(ब) अनुकंपा तत्वावर नियुक्ती देताना असे प्रस्ताव शासन सेवेतील रोजगारावर असलेली मर्यादा योजनेच्या मागील भूमिका लक्षात घेउन जो कर्मचारी मृत झाला त्यांच्या कुटुंबियांना तात्काळ उदभवणा-या आर्थिक पेचप्रसंगावर मात करण्याच्या उद्देशाने विचारात घ्यावेत.

एखादया कुटुंबात मृत कर्मचा-याचा नातेवाईक पूर्वीच सेवेत असेल, तथापि तो त्याच्या कुटुंबातील अन्य सदस्यांना आधार देत नसेल तर अशा प्रकरणात त्या कुटुंबाची आर्थिक परिस्थिती हालाखाची आहे किंवा कसे हे ठरविताना नियुक्ती अधिका-याने अत्याधिक दक्षता घ्यावी, जेणेकरून सेवेत असलेला सदस्य कुटुंबाचा उदरनिर्वाह करीत नाही या नावाखाली अनुकंपा तत्वावरील नियुक्तीचा दुरुपयोग केला जाणार नाही.

या संदर्भात नियुक्ती अधिका-याने मिळणा-या निवृत्ती वेतनाची रक्कम, कुटुंबातील व्यक्तीची शंका, त्याची मालमत्ता दायित्व, गंभीर आजारामुळे किंवा अपघातामुळे मृत झाला असल्यास त्यासाठी करण्यात आलेला वैदयकीय खर्च, कुटुंबातील मिळवत्या व्यक्ती इत्यादी बाबी विचारात घेणे अपेक्षित आहे.’’

12. As such, the Respondents were required to see that the family is really in financial distress and the scheme for appointment on compassionate ground should not be misused. The Department was therefore, required to find out where one of heir is already in Government service, whether he is not supporting or maintaining other heirs of the deceased and was required to take appropriate decision. Thus, even if one of the heir of the deceased employee is in service that itself may not operate bar for providing appointment on compassionate ground, if the heir who is in Government service is not supporting and maintaining the other heirs. Whereas, in the present case, it is nowhere the case of the Applicant that she was residing separate or her father was not maintaining her. Her application dated 05.07.2008 is totally silent on this point. Indeed, she has suppressed the fact that her father is in Government service while making application dated 05.07.2008. She got married on 25.11.2008. True, the married daughter is also entitled for appointment on compassionate ground provided the family of the deceased is in financial distress and she undertakes to support the family. However, this is not a case here, as her father was in Government service and able to maintain the family.

13. In view of above, the rejection of the claim of the Applicant for appointment on compassionate ground cannot be faulted with, as the father of the Applicant was already in Government service when Applicant made an application. As such, this is not a case where the family was in financial crises and there was no other way except

appointment on compassionate ground to tide over the financial crises.

14. True, the Applicant's father later retired on 30.06.2016. Material to note that the Applicant also got married on 25.11.2008. Thus, since marriage, the Applicant is living with her husband. Her father is also now getting pension as well as family pension payable on account of death of his wife. In so far as the Applicant is concerned, she cannot be said burdened with the maintenance of dependent of the deceased Mandakini.

15. Shri Bandiwadekar, learned Advocate for the Applicant sought to place reliance on the decision in **Writ Petition No.1284/2011** (cited supra). In that case, the claim for appointment on compassionate ground was rejected on the ground that one of the Applicant was getting family pension after the death of deceased employee who died in harness. It is in that context, the Hon'ble High Court held that even if one of the member in receipt of family pension that itself would not make other eligible family members ineligible for appointment on compassionate ground. Whereas, in the present case, at the time of death of Smt. Mandakini, her husband Ramdas i.e. father of Applicant was very much in Government service and was able to maintain the family consists of himself and daughter i.e. the Applicant only. Therefore, the decision in **Writ Petition No.1284/2011** is of no assistance to the Applicant in the present case.

16. The submission advanced by the learned Advocate for the Applicant that the Respondents have not made proper enquiry about the source of livelihood of the heirs of the deceased, and therefore, the matter needs to be remitted back for enquiry afresh is fallacious. Admittedly, at the time of death of Smt. Mandakini, her husband Ramdas was in Government service and if this being so, the family

was not in distress so as to claim the appointment on compassionate ground. Therefore, the question of detailed enquiry by the Department to that effect did not survive. Suffice to say, the dependents of the deceased employee were not left without any financial resource in view of employment of Applicant's father with the Government.

17. At this juncture, it would be apposite to refer the Judgments of Hon'ble Supreme Court, which have complete bearing over the present matter.

(A) In **(2008) 15 SCC 560 (Sail Vs. Madhusudan Das (Page Nos.46 in O.A.770/2018))**, the Hon'ble Supreme Court has observed as under:-

“15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor, viz. That the death of the sole bread winner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said rule. It is a concession, not a right.”

(B) In **(2008) 8 SCC 475 (General Manager, State Bank of India & Ors. Vs. Anju Jain)**, the Hon'ble Supreme Court has observed as under :-

“It has been clearly stated that appointment on compassionate ground is never considered to be a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per the settled law, when any appointment is to be made in Government or semi-government or in public office, cases of all eligible candidates are be considered alike. The State or its instrumentality making any appointment to public office, cannot ignore the mandate of Article 14 of the Constitution. At the same time, however, in certain circumstances, appointment

on compassionate ground of dependants of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread winner. It is an exception to the general rule of equality and not another independent and parallel source of employment.”

(C) In **(2012) 11 SCC 307 (Union of India & Anr. Vs. Shashank Goswami & Anr.)**, the Hon’ble Supreme Court has observed as under :-

“It has been observed that the claim for appointment on compassionate grounds is based on the premise that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld up the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service, and, therefore, appointment on compassionate grounds cannot be claimed as a matter of right.”

(D) In the matter of **(2010) 11 SCC 661 (State Bank of India & Anr. Vs. Raj Kumar)**, the Hon’ble Supreme Court has observed as under :-

“The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules of by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme.”

18. As such, in view of aforesaid decisions, it is no more *res-integra* that the appointment on compassionate ground cannot be claimed as a matter of right. There must be proximity in the death of the employee and need of employment which is completely missing in the present case. The claim of the Applicant was rejected by order dated 23.01.2009 which was not challenged by the Applicant. She remained silent for eight years, and thereafter, in

2016 made an application. This invariably spells that there was no such hardship to attract the scheme of compassionate appointment. The Applicant is living with her husband and her father is also getting pension in view of his retirement on 30.06.2016. This being the position, the rejection in the claim of the Applicant by impugned order cannot be faulted with. Indeed, it is in consonance and object of the Scheme. The challenge to the impugned order is, therefore, devoid of any substance. This is nothing but an attempt to exploit and misuse the scheme which cannot be allowed to happen.

19. The necessary corollary of aforesaid discussion leads me to sum-up that the challenge to the impugned order is devoid of merit and O.A. deserves to be dismissed. Hence, the following order.

ORDER

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

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

Mumbai
Date : 11.03.2020
Dictation taken by :
S.K. Wamanse.