

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.649 OF 2022

DISTRICT : SOLAPUR

Sub.:- Compassionate Appointment

Shri Iqbal Mahamudmiya Birajdar.)
Age : 21 Yrs, Occu.: Student,)
R/o. G-1, Abhishek Nagar, Mirarji Peth,)
Juna Puna Naka, District : Solapur.)...**Applicant**

Versus

1. District Superintendent of Land)
Records, Solapur.)
2. Deputy Director of Land Record,)
Pune, New Administrative Building,)
Vidhan Bhavan, Pune – 1.)
3. Director of Settlement Commissioner)
Pune, New Administrative Building,)
Vidhan Bhavan, Pune – 1.)
4. The State of Maharashtra.)
Through Chief Secretary,)
Revenue Department, Mantralaya,)
Mumbai.)...**Respondents**

Shri R.P. Hakepatil, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 25.04.2023

JUDGMENT

1. The Applicant has challenged the communication dated 18.07.2019 issued by Respondent No.2 – Deputy Director of Land Records, Pune thereby rejecting his claim for compassionate appointment on the ground that his mother Smt. Malan is in Government service, and therefore, he is not entitled to compassionate appointment.

2. Shortly stated facts giving rise to this application are as under :-

Applicant's father viz. Mahamudmiya was Peon on the establishment of Respondent No.1 – District Superintendent of Land Records, Solapur. Unfortunately, he died in harness on 27.02.2015 leaving behind Applicant and two daughters. After his death, widow Smt. Malan made an application on 18.06.2015 requesting compassionate appointment to Applicant Iqbal who was that time minor. Later, Applicant on becoming major also made an application on 20.09.2018 for compassionate appointment and supplied necessary information/Affidavit. However, his claim is rejected on the ground that his mother Malan is in Government service on the post of Police Constable and there was no such necessity of compassionate appointment in the family, which is challenged by the Applicant in the present O.A.

3. Shri R.P. Hake Patil, learned Advocate for the Applicant sought to assail the legality of communication dated 18.07.2019 *inter-alia* contending that there was divorce [खुलानामा] in between his mother and father in 2005 and since then, she is residing separate. Divorce Deed before Kazi dated 12.02.2005 is at Page No.25 of P.B. He, therefore, contends that since Applicant is leaving separate from his mother, he is entitled to compassionate appointment and the employment of mother could not be the ground to reject the claim. He further canvassed that Department ought to have made appropriate enquiry as to whether

mother was living with the Applicant or otherwise in absence of any such enquiry, the impugned communication is unsustainable in law.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to justify the impugned communication and pointed out that since admittedly, Applicant's mother is in Government service drawing sumptuary salary around to Rs.40,000/- per month, apparently, there was no such need much less dire need to claim compassionate appointment. He further canvassed that the ground of divorce now taken by the Applicant is nothing but concoction and it cannot be accepted as a gospel truth. He has further pointed out that Smt. Malan herself made an application on behalf of Applicant which shows that they were living together. On this line of submission, the learned P.O. urged that impugned communication rejecting the claim for compassionate appointment cannot be faulted with and prayed to dismiss the O.A.

5. Needless to mention, the aim and object of the scheme for compassionate appointment is to provide financial assistance to the family of deceased Government servant who is in financially distressed condition on account of death of sole earning member in the family. In other words, the object of scheme is to alleviate the financial difficulties of the family of deceased Government servant. It is well settled that compassionate appointment cannot be claimed as a legally vested right and it is mere concession to the family of deceased Government servant. As such, the claim for compassionate appointment must be in consonance with the scheme and it cannot be claimed as a vested right much less legally enforceable right.

6. Turning to the facts of the present case, indisputably, Applicant's mother Smt. Malan is in Government service on the post of Police Constable. The Respondents have produced salary details which shows that she is getting salary around to Rs.40,000/- p.m.

7. Now question posed for consideration is whether the ground taken by the Applicant that there was divorce between his mother and father and is living separate from her mother so as to claim compassionate appointment. In this behalf, as stated above, it is mother Smt. Malan who initially made an application for compassionate appointment for his son Iqbal who was minor at that time. Notably, in application dated 18.06.2015 made by Smt. Malan, she nowhere whispered that there was divorce between her and husband and she is residing separate. On the contrary, what she stated in application dated 18.06.2015 that she alone is the earning member in the family and requested for compassionate appointment. As such, her application is totally silent about the divorce between her and husband. That apart, Applicant also in his application dated 21.09.2018 (Page No.33) where after attaining majority did not mention that he is residing separate from his mother or there was divorce between his mother and father. Furthermore, when Department asked for further necessary information/Affidavit, that time Smt. Malan tendered the Affidavit as well as Applicant Iqbal had tendered Affidavit which are Page Nos.38 and 40 of P.B. Interestingly, in Affidavit, Smt. Malan is silent about the theory of divorce in between her and husband. Conversely, in Affidavit, she stated that after the death of husband, she is shouldering the responsibility to maintain son and two daughters in her salary. As such, the contents of Affidavit negate Applicant's stand now taken that there was divorce between his mother and father. That apart, in service record, while making nomination for retiral benefits, the deceased Government servant has shown name of his wife Malan as his wife. Notably, the deceased Government servant joined service in 2007, whereas alleged divorce had taken place on 12.02.2005. If there was any such divorce and deceased Government servant and his wife were living separate, there would have been no occasion to nominate Smt. Malan as his wife for retiral benefits.

8. Suffice to say, the stand now taken by the Applicant that there was divorce between his mother and father is after-thought contention raised

only to seek compassionate appointment. This theory of divorce stands negated in view of circumstances noted above. In this view of the matter, the Applicant's contention that there was divorce between his mother and father does not inspire any confidence and in fact, it stands negated.

9. As stated above, the compassionate appointment cannot be claimed as a legally vested right. It is not bonanza to family. It is by way of concession to provide financial assistance to the family in distress on account of death of sole earning member of family. Where one of the member of the family is in Government service and earning about Rs. 40,000/- per month, another member of the family cannot claim compassionate appointment. The idea of compassionate appointment is not to provide endless compassion and where there are any such financial difficulties, the rejection of claim cannot be faulted with.

10. The principles for appointment on compassionate ground in view of the various judgements of the Hon'ble Supreme Court can be summarized 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 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.

C) 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.

D) 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.

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

F) 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.

G) 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.”

11. By applying these principles, inevitable conclusion is that the claim of the Applicant for compassionate appointment is totally unsustainable and challenge to the impugned communication dated 18.07.2019 is devoid of any merit. 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 : 25.04.2023
Dictation taken by :
S.K. Wamanse.

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