
(2023) 01 BOM CK 0060

Bombay High Court

Case No: Writ Petition No. 1423 Of 2022

Pratibha Sanjay
Padamalwar And
Others

APPELLANT

Vs

Municipal Corporation
Of Greater Mumbai And
Others

RESPONDENT

Date of Decision: Jan. 12, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 14, 16, 226

Citation: (2023) 01 BOM CK 0060

Hon'ble Judges: S. V. Gangapurwala, J; S. G. Chapalgaonkar, J

Bench: Division Bench

Advocate: Subhash V. Gutte, Sayali S. Gutte, Amit Shastri, L. T. Satelkar, S. S. Pakle, Rupali Adhate

Final Decision: Disposed Of

Judgement

S. G. Chapalgaonkar, J

1. The Petitioners have approached this Court under Article 226 of the Constitution of India, thereby raising challenge to the Circular dated 05.01.2016

issued by the Respondent "MCGM as well as order dated 10.03.2021 rejecting Application of petitioner No. 02 seeking appointment on

compassionate ground.

2. The Petitioners are the widow and son of late Sanjay Padamalwar who was serving under the establishment of the Respondent "MCGM since

1988. However, he was medically invalidated w.e.f. 11.08.2018 at the age of 52 years.

3. The Petitioner No. 2, who is the son of Sanjay Padamalwar, submitted an Application seeking appointment on establishment of respondent-

corporation on compassionate ground. However, the claim of the Petitioner No. 2 came to be rejected by the Respondent "MCGM under the

communication dated 10.03.2021, stating that at the time of medical invalidation, Mr. Sanjay Padamalwar, had crossed 50 years of age. As per the

Circular dated 05.01.2016, benefit of compassionate appointment cannot be made available to the family member of the employee, who was more than

50 years of age at the time of medical invalidation.

4. Learned counsel for the Petitioners submitted that the Respondent "MCGM has a Scheme for providing compassionate appointment to the

family member of the employee, who died in harness or suffered medical invalidation while in the service. As per the original Scheme, family member

of the employee, who has suffered medical invalidation up to his age of 53 years were given benefit of compassionate appointment. However, claim of

the Petitioner No. 2 is rejected giving reference to the impugned Circular dated 05.01.2016 which reduced age limit to 50 years from 53 years.

5. Learned counsel for the Petitioners would submit that the Government Resolution dated 21.09.2017 issued by the State of Maharashtra provide for

compassionate appointment to the family members of the employees died in harness without restriction of age of employee at the time of his death. In

that view of the matter, the policy, as prescribed by respondents under the Circular dated 05.01.2016 is inconsistent to the policy of the State

Government. He would further submit that there is no rational behind providing the age limit for extending the benefit of compassionate appointment in

respect of medically invalidated employee. Learned counsel for the Petitioners would submit that there is no reason to discriminate between the family

member of the employee, who died in harness and the employee medically invalidated, since suffering of family member in both the cases is similar in

nature. In support of his contention, he relied on the Judgments of the Hon'ble Apex Court in the case of

(i) Smt. Sushma Gosain And Ors. vs Union of India (Uoi) And Ors, reported in AIR 1989 SC 1976;

(ii) Chandrakant Sakharam Karkhanis vs State Of Maharashtra And Ors., reported in AIR 1977 Bom 193;

(iii) National Association of Blind vs Bombay Municipal Corporation, Through its Commissioner and Another decided by this Court dated 28.10.2020

in PIL-CJ-LD-VC-NO.45 OF 2020;

(iv) Umesh Kumar Nagpal vs State of Haryana, reported in 1994 SCC(4) 138;

(v) State of Chhatisgarh vs Dhirjo Kumar Sengar, reported in 2009(13) SCC 600;

(vi) V. Sivamurthy vs State of Andhra Pradesh & Ors decided on 12.08.2008 in Civil Appeal No. 4210 of 2003.

6. Learned counsel for the Respondent "MCGM would submit that the compassionate appointment is not a matter of right, but purely at the

discretion of the Competent Authority. He would submit that compassionate appointment can be given only in serious cases strictly in accordance with

the Scheme / Policy of the employer. The Circular dated 05.01.2016 prescribes maximum age of 50 years in respect of medically invalidated

employee for extending benefit of compassionate appointment to his family member. He submits that there is a valid object behind prescribing age

criteria, since there is tendency on the part of the employees nearing the age of superannuation to take advantage of the Scheme and seek retirement

on medical ground. Learned counsel for the Respondent "MCGM further submits that previously, the Petitioners had approached this Court seeking

similar relief in W. P. (L) No. 3966 of 2021. The Petitioners had raised challenge to the validity of the Circular dated 05.01.2016. The said Writ

Petition was disposed of with directions to the Corporation to decide the Petitioner's Application/representation seeking appointment on

compassionate ground on the post of "Peon" on its own merits. The Corporation after considering merits of the matter took the conscious

decision based on existing policy and refused to entertain the claim. The decision of the Corporation dated 10.03.2021 is communicated to the

Petitioners.

7. Learned counsel for the Respondent while repelling the contention of the Petitioners relied on the Judgment of the Hon'ble Apex Court in the

case of

(i) Food Corporation of India And Another vs Ram Kesh Yadav And Another, reported in (2007)9 SCC 531;

(ii) Steel Authority of India Ltd. vs Madhusudan Das, reported in 2009 AIR(SC) 1153;

(iii) The State of Maharashtra & Anr. Vs Bhagwan & Ors in the case of Civil Appeal Nos. 7682-7684 OF 2021 decided on 10.01.2022;

(iv) Smt. Nilima Raju Khapekar vs The Executive Director, Bank of Baroda, Baroda and others decided by this Court, Bench at Nagpur on 22.04.2022

in W. P. No. 3907 of 2021.

8. We have heard learned counsels for respective parties. It is not in dispute that Sanjay Padamalwar i. e. father of the Petitioner No. 2 was employed

as Peon from 01.11.1988 till he was medically invalidated w.e.f. 18.08.2018. He was aged about 52 years at that time. On or about 07.02.2019,

Petitioner No. 2 applied seeking compassionate appointment claiming his father is medically invalidated. The Respondent "MCGM declined to

consider claim of the Petitioner No. 2 giving the reason that father of the Petitioner No. 2 had crossed age of 50 years. Hence, as per policy

underlined in Circular dated 05.01.2016, claim cannot be considered.

9. It is the trite that appointment on compassionate ground is not a right but the same has been provided by way of policy adopted by the employer.

The Respondent has framed their own policy under the executive instructions. The policy provides for compassionate appointment in case of death of

employee in harness or medical invalidation. The Respondent "MCGM has issued Circular dated 05.01.2016, thereby fixing age criteria of 50 years

in respect of the employee medically invalidated for extending benefit of the compassionate appointment to his family member.

10. The Hon'ble Supreme Court of India in the case of Food Corporation of India And Another (Supra) has observed in paragraph 9 which reads

as under :-

“9. There is no doubt that an employer cannot be directed to act contrary to the terms of its policy governing compassionate appointments. Nor can

compassionate appointment be directed dehors the policy. In LIC v. Asha Ramchandra Ambekar this Court stressed the need to examine the terms

of the rules/scheme governing compassionate appointments and ensure that the claim satisfied the requirements before directing compassionate

appointment. In this case, the scheme clearly bars compassionate appointment to the dependent of an employee who seeks voluntary retirement on

medical grounds, after attaining the age of 55 years. There is a logical and valid object in providing that the benefit of compassionate appointment for a

dependent of an employee voluntarily retiring on medical grounds, will be available only where the employee seeks such retirement before completing

55 years. But for such a condition, there will be a tendency on the part of employees nearing the age of superannuation to take advantage of the

scheme and seek voluntary retirement at the fag end of their service on medical grounds and thereby virtually creating employment by

“succession”. It is not permissible for the court to relax the said condition relating to age of the employee. Whenever a cut-off date or age is

prescribed, it is bound to cause hardship in marginal cases, but that is no ground to hold the provision as directory and not mandatory.”

11. The observations of Hon'ble Apex Court in the aforesaid matter shows that the employer has every right to adopt the age criteria of the

employee retiring on medical ground for purpose of providing benefit of compassionate appointment to his family member. It is not permissible for the

Court to relax such criteria relating to the age of employee. Even provision prescribing age limit cannot be considered directly.

12. In view of the aforesaid observations, it is difficult to accede with the contention of the Petitioners that, the Circular dated 05.01.2016 prescribing

age limit of 50 years in respect of the employee retiring on medical ground for appointment of his family member on compassionate ground is unjust or

unreasonable. We have observed that policy regarding compassionate appointment framed by respondent is by way of executive instructions only.

There is nothing on record to show that impugned circular dated 05.01.2016 is inconsistent with policy adopted by respondent corporation or same is

Ultra Vires. There is no statutory scheme or provision applicable to MCGM providing for appointment to the wards of employee retiring on medical

grounds. In absence of that, the MCGM is empowered to frame the policy or issue executive instructions in this regard. The policy framed by the

instrumentality of the State cannot be assailed unless demonstrated that such policy suffers from vice of arbitrariness or it is so irrational that no man

of ordinary prudence will accept it. It is prerogative of an employer to provide for age criteria for application of provision relating to compassionate

appointment to the ward of medically invalidated employee. The policy decision taken by the Respondent "MCGM to bring down age of medically

invalidated employee to 50 years from 55 years under the impugned Circular is based on their wisdom and administrative exigency.

13. The contention of the Petitioners that the Circular dated 05.01.2016 is inconsistent with the policy of the State Government underlined in

Government Resolution dated 21.09.2017 cannot be accepted for the simple reason that, the policy under the Government Resolution is applicable to

the employee of the State Government. It is not adopted by corporation. Further the Government Resolution dated 21.09.2017 shows that there is no

provision for compassionate appointment to the family member of employee medically invalidated. The scheme of the State Government provides for

compassionate appointment only in the case of death in harness. The Petitioners are claiming benefit of the policy which is framed by the Respondent

"MCGM. Therefore, argument on this count is not acceptable.

14. Learned counsel Judgment in the case of contend that the claims for the Petitioners relied upon the Smt. Sushma Gosain And Ors. (Supra) to

for compassionate appointment shall be considered expeditiously, since the family of the deceased employee required to mitigate the hardship. There

cannot be dispute regarding the proposition. Similarly, learned counsel for the Petitioners has relied upon the Judgment of the Hon'ble Apex Court

in the case of Umesh Kumar Nagpal (Supra) . However, it has no application in the facts of the case. Learned counsel for the Petitioners has further

relied upon the Judgment of the Hon'ble Apex Court in the case of Director of Education (Supra), wherein directions were given to create

supernumerary posts to accommodate the Petitioner. The said Judgment is also not relevant to consider the issue posed for consideration in this case.

Learned counsel for the Petitioners further relied upon the Judgment of the Hon'ble Apex Court in the case of V. Sivamurthy vs State of Andhra

Pradesh & Ors, wherein the Hon'ble Apex Court has laid down that no discrimination can be made between the employee, who died while in

service and the employee, who has been medically invalidated while considering the compassionate appointment of dependents. The said observations

are made while setting aside a Full Bench Judgment of Andhra Pradesh High Court holding that there cannot be appointment on compassionate

ground in cases other than death of a government servant in harness, and that any scheme for compassionate appointment on medical invalidation of a

government servant, is unconstitutional, being violative of Article 16 of the Constitution of India.

15. However, in the present case, there is no dispute of similar nature. Learned counsel for the Petitioners has further relied upon the Scheme of

compassionate appointment framed by the Government of India, Ministry of Personnel/Public Grievances and Pensions which provides for

compassionate appointment in case of the employee retired on medical ground. However, claim of the Petitioners will have to be assessed on the basis

of the Schemed framed by the Respondent.

16. Learned counsel for the Respondent " Corporation has invited our attention to the Judgment of the Hon'ble Apex Court in the case of Steel

Authority of India Ltd. vs Madhusudan Das and referred to paragraph 16. The observations in paragraph 16 read as under :-

"16. It may be that such a provision was made as a measure of social benefit but it does not lay down a legal principle that the court shall pass an

order to that effect despite the fact that the conditions precedent therefor have not been satisfied.

17. Learned counsel for the Respondent has further relied upon the Judgment of the Hon'ble Apex Court in the case of The State of Maharashtra

& Anr. Vs Bhagwan & Ors. particularly on the following observations which read as under :-

"As per the law laid down by this Court in a catena of decisions, the employees of the autonomous bodies cannot claim, as a matter of right, the

same service benefits on par with the Government employees. Merely because such autonomous bodies might have adopted the Government Service

Rules and/or in the Governing Council there may be a representative of the Government and/or merely because such institution is funded by the

State/Central Government, employees of such autonomous bodies cannot, as a matter of right, claim parity with the State/Central Government

employees.

18. Learned counsel for the Respondent has further relied upon the Judgment of the Hon'ble Apex Court in the case of State of Chhatisgarh vs

Dhirjo Kumar Sengar and invited our attention to the observations in paragraphs 15 to 17 which state that appointment on compassionate ground is an

exception to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. Nobody can claim appointment

by way of inheritance.

19. We have given conscious consideration to the law laid down by the Hon'ble Apex Court as well as this Hon'ble Court in the aforesaid

Judgments. We find that claim of the Petitioners cannot be considered for compassionate appointment, dehors the conditions regarding age criteria laid

down under the Scheme. The claim of the Petitioners do not fit within the ambit of the Scheme operated by the Respondent. As observed by the

Hon'ble Apex Court in a catena of decisions referred above, the compassionate appointment is not the right. The prescribed age criteria under the

scheme would be binding on the Petitioners. This Court cannot issue direction to the Respondent Corporation, contrary to the Scheme adopted by

them.

20. In view of the aforesaid observations, there is no merit in the Writ Petition. The Writ Petition is accordingly disposed of with no order as to costs.