

Umesh Udhavrao Tawar Vs Chief Executive Officer Zilla Parishad Aurangabad And Another

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: Jan. 24, 2025

Hon'ble Judges: Mangesh S. Patil, J; Prafulla S. Khubalkar, J

Bench: Division Bench

Advocate: D.R. Irale Patil, Rahul A. Tambe, R.K. Ingole

Final Decision: Allowed

Judgement

Mangesh S. Patil, J

1. Heard. Rule. It is made returnable forthwith. Mr. Tambe waives service for respondent no. 1 and Mr. Ingole, learned AGP waives service for

respondent no. 3.

2. The petitioner is seeking appointment with respondent no. 1 on compassionate ground on account of demise of his father on 31-08-2004 while being

in the employment of respondent no. 1 - Zilla Parishad as a primary school teacher in Zilla Parishad primary school, Paithan. His date of birth is 15-09-

1995. After attaining majority, he submitted an application under the extant scheme seeking appointment on compassionate ground on 10-02-2014. It

was forwarded by the headmaster to respondent no. 2 - Block Education Officer on the very day. In spite of being eligible, the proposal was rejected

by respondent no. 1, on the ground that it was not submitted within the stipulated period of one year, as is expected under the scheme pronounced by

government resolution dated 11-12-1996. It was ignored that the application was filed within a year of his reaching the age of majority. Hence, this

petition challenges the impugned communication / order dated 14-09-2016, refusing appointment on compassionate ground and seeking a direction to

include the name in the wait list in accordance with the original proposal.

3. By way of amendment dated 12-12-2019, the petitioner further averred that the government resolution dated 22-08-2005 to the extent of paragraph

no. 2(3), is unconstitutional on the ground that it is arbitrary and contrary to the aims and objects of the scheme of appointment on compassionate

ground by rest of the heirs which are still minors.

4. Petition is contested by respondent no. 1 by filing affidavit in reply. It is inter alia averred that petitioner's elder brother - Sachin reached

majority on 22-07-2010, having been born on 22-07-1992. As per government resolution dated 22-08-2005, the period of filing application for

compassionate appointment was reduced from 5 years to 1 year and Sachin having not applied within one year of reaching majority, and the

petitioner's application being late by 3 years 11 months and 26 days, of Sachin reaching the majority, was not within the time available under the

scheme to seek appointment on compassionate ground. It is also contended that as per the government resolution dated 11-09-1996, it was specifically

laid down that the application should be filed within a year of one of the heirs of the deceased employee reaching majority. The petitioner and his

family could have intimated the office of respondent no. 1 within one year of Sachin reaching majority that it was the petitioner who was interested in

applying on the ground of compassionate appointment. There was no illegality in rejecting the petitioner's application.

5. The petitioner has also filed a rejoinder and inter alia reference is made to the government resolution dated 21-09-2017 making it permissible for a

minor of the deceased to make an application within one year of his attaining the age of 18 years. The petitioner's mother had pre-deceased his father

in the year 2003. He was barely 9 years of age and his brother Sachin was 13 years of age on the date of death of the father on 31-08-2004. Sachin

had filed affidavit on 06-02-2014, giving up his claim and had proposed the petitioner to be appointed. It was intimated to respondent no. 1 and,

thereafter, no immediate decision was taken and abruptly, the order was passed refusing the appointment to the petitioner.

6. We have heard both the sides and perused the record.

7. Learned advocates made submissions in consonance with their stand in the respective pleadings.

8. There is no dispute about the fact that the petitioner's father was in the employment of the Zilla Parishad as a primary teacher and died in

harness on 31-08-2004. The averment in the rejoinder about his mother having predeceased the father in the year 2003, has not been disputed. There

is also no dispute about the fact that the date of birth of the petitioner's brother - Sachin is 22-07-1992 and that of the petitioner is 15-09-1995.

There is also no dispute about the fact that the petitioner had submitted application seeking appointment on compassionate ground on 10-02-2014,

apparently within one year of reaching the age of majority.

9. The impugned order, the stand in the affidavit in reply and the submissions of Mr. Tambe revolve around the fact that it is an appointment on

compassionate ground and the scheme is floated to provide immediate succor to the family of the deceased in distress. The thrust of the argument of

Mr. Tambe is on the point that petitioner's father having died way back in the year 2004 and the petition having been filed in the year 2019, after a

lapse of almost 14-1½ years, by passage of time would obliterate the exigencies to be met for which the scheme is floated and has received

recognition. Even it is his submission that for whatever reason, if such an enormous time is lost from the date of death, allowing such appointment on

compassionate ground, would be like treating such a claim as an inherent and indefeasible right. This would be inconsistent with the policy.

10. He would further submit that even the right of the petitioner will have to be decided in accordance with the policy and the scheme, as was

obtaining on the date of death of his father. He would, therefore, submit that reliance of the petitioner in the subsequent government resolution dated

21-09-2017, is misplaced.

11. At the first blush, the submission of the learned advocate Mr. Tambe seems convincing. However, simultaneously, it overlooks the plight of a

minor who, for his inability, is unable to make the application seeking compassionate appointment. It is in order to meet such a contingency, the

government resolution dated 11-09-1996 provided for supplementing the government resolution dated 26-10-1994 adding therein a stipulation that in

respect of the deceased employee, the application should be filed within a year of reaching the age of 18 years by one of the several minor heirs.

12. Though it is contemplated that it would be only first minor child or heir reaching the age of majority as the cut-off date for making an

application, in our considered view, this government resolutions dated 22-08-2005 even without there being any challenge, in the peculiar

circumstances need to be read down to mean any minor child making an application within a year of attaining the majority. As it has happened

in the present matter, the petitioner's elder brother - Sachin, according to this government resolution dated 22-08-2005, was supposed to make

application seeking compassionate appointment, within one year of reaching majority. However, it seems that he was not interested and did not make

any application. It would be arbitrary and capricious to expect the petitioner who was still a minor to have made an application seeking appointment on

compassionate ground for himself within one year of Sachin reaching majority. This could not have been in the contemplation of the state while adding

the proviso to clause 5 of the government resolution dated 26-10-1994.

13. It is in this light of the factual scenario that it would be apposite to mention that even in the subsequent government resolution dated 22-08-2005, it

was provided that the period which was till then 5 years, was reduced to one year for an eligible member in the family of the deceased employee. The

government resolution dated 22-08-2005 was issued after the demise of petitioner's father, when admittedly, the petitioner and even his elder

brother - Sachin were minors on the date this government resolution had seen the light of the day. It would be too harsh to apply this clause reducing

the time limit of 5 years to 1 year and would be arbitrary and discriminatory if it is to be applied to even them when there was no immediate adult

blood relative in the family.

14. Similarly, even if the subsequent policy under the government resolution dated 21-09-2017 is assumed to be not applicable to the petitioner's

claim, being a policy of the subsequent period, it was issued superseding all the earlier policies including the initial government resolutions dated 26-10-

1994 and 11-09-1996 and including the government resolution dated 22-08-2005. It lays down that a person seeking appointment on compassionate

ground can file an application if he is a minor heir, within one year of attaining the majority, extendable up to 3 years at the discretion of the concerned

department of the state government. The change in the policy is indicative of the relaxation by the state having realized the arbitrariness and hardship

resulting in earlier policies restricting this time to one year from the first of the minor heirs attaining the majority, ignoring his unwillingness and inability

of other minors to make such an application.

15. It is in the light of such changed policy, we are of the firm view that the stipulation in the extant policy as was applicable to the petitioner

mandating him to make an application within 1 year of his elder brother - Sachin attaining the majority and further reducing the initial period of 5 years

to 1 year by government resolution dated 22-08-2005, is clearly arbitrary and would not be applicable to the petitioner. It is liable to be read down to

mean 1 year after reaching the majority when the application for appointment is filed by a minor dependent of the deceased, irrespective of any other

dependent heir reaching the age of majority. It is only in this manner, in our considered view, the peculiar situation in the matter in hand can be legally

met.

16. The writ petition is allowed.

17. The impugned order dated 14-09-2016 is quashed and set aside.

18. Respondent no.1 is directed to consider the petitioner's application dated 10-02-2014 on its own merits and in accordance with law and the

observations made herein-above, as expeditiously as possible and in any case within 8 weeks under intimation to him.

19. Rule is made absolute in the above terms.