



Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 484 OF 2024

Mr Dayanand Sharad Dicholkar
Age 31 years, Son of Sharad
Sitaram Dicholkar (Late)
Resident of H.No.640,
Shivolkarwada,
Mulgao, Bicholim Goa.

... Petitioner

Versus

1 State of Goa,
Through Chief Secretary
Government of Goa,
Secretariat,
Porvorim Goa.

2 The Secretary
Department of Personnel,
Government of Goa,
Secretariat,
Porvorim Goa.

3 The Under Secretary (Personnel-II),
Department of Personnel,
Government of Goa,

4 The Secretary,
Department of Home,
Government of Goa,
Secretariat,
Porvorim Goa.

5 Department of Public Works Department,
Office of the Principal Chief Engineer,

Public Works Department,
Altinho, Panaji Goa.

...Respondents

Ms Swati S. Kamat Wagh, Advocate for the petitioner.

Mr Manish Salkar, Government Advocate for the respondents.

**CORAM: M. S. KARNIK &
NIVEDITA P. MEHTA, JJ**

DATED : 16th JANUARY 2025

JUDGMENT (Per Nivedita P. Mehta, J)

1. Heard Ms Swati Kamat Wagh, learned counsel for the petitioner and Mr Manish Salkar, learned Government Advocate for the respondents.

2. Rule. The rule is made returnable forthwith at the request and with the consent of the learned counsel for the parties.

3. The petitioner has filed the present petition under Articles 226 and 227 of the Constitution of India seeking the following reliefs: -

A) This Hon'ble Court may be pleased to issue a writ in the nature of Certiorari or writ of appropriate directions/an appropriate Writ/order to quash and set aside impugned communication (I) dated 10.11.2023 issued by respondent No.2 and to pass such appropriate orders to meet ends of justice;

- B) This Hon'ble Court may be pleased to issue a writ in the nature of Certiorari or writ of appropriate directions/an appropriate Writ/order to quash and set aside impugned communication (II) dated 20.12.2023 issued by respondent No.2 and to pass such appropriate orders to meet ends of justice;
- C) This Hon'ble Court may be pleased to issue writ of Mandamus and/or any writ and/or direction and/or order allowing the present petition by directing the respondents to appoint the petitioner to the post of Assistant Sub-Inspector (Wireless Operator) under Compassionate Appointment Scheme by completing such inter departmental formalities in order to avoid further injury of financial hardship to the petitioner;
- D) This Hon'ble Court may be pleased to issue writ of Mandamus and/or any writ and/or direction and/or order allowing the present petition to direct the respondents 1 to 4 to appoint the petitioner for post of Assistant Sub-Inspector (Wireless Operator) under compassionate appointment Scheme in order to avoid further injury of financial hardship in the interest of justice;

In the alternative:

E) This Hon'ble Court may be pleased to issue writ of Mandamus and/or any writ and/or direction and/or order allowing the present petition to direct the respondents to appoint the petitioner to the any of the posts as per vacancy existing at the office of respondent No.5 as well as office of Water Resources Department under compassionate appointment scheme in order to avoid further injury of financial hardship in the interest of justice.

4. The brief facts as have been pleaded in the petition are that the petitioner's father late Sharad Sitaram Dicholkar was employed as a Pump Operator and was posted at Works Division XXIV (PHE-N), Public Works Department, Bicholim Goa. He passed away on 05.05.2016 while in service leaving behind his legal representatives, including his wife Smt. Sumitra Sharad Dicholkar and two sons, one of whom is the petitioner. The other son namely Sachin Sharad Dicholkar is in an indigent condition.

5. On 05.10.2016 and 04.08.2017 the petitioner submitted applications to the Executive Engineer, Works Division XXIV (PHE-N), Public Works Department, Bicholim Goa, detailing his financial situation and employment status. The petitioner

contended that due to considerable tardy response in processing his applications for compassionate appointment, the petitioner made several representations to various authorities. Unfortunately, his mother passed away on 10.03.2022 leaving the petitioner and his brother Sachin as the only surviving family members.

6. The Under Secretary (Personnel –II) Department of Personnel, Government of Goa (respondent No.2) informed the petitioner vide letter dated 18.07.2022 that his application for compassionate appointment was processed, placing him at serial No.138 on the seniority waitlist maintained by the Department for candidates seeking compassionate appointments. Based on the information received under the Right to Information Act 2005, the petitioner learned that his grievance regarding expedited consideration for compassionate appointment was forwarded to the Government of Goa for necessary action. The Under Secretary (Personnel –II), Department of Personnel, Government of Goa, later informed the petitioner that he was placed at serial No.127 in accordance with the compassionate appointment guidelines.

7. The petitioner continued to pursue his request for compassionate appointment with various departments of the State Government of Goa. He received information that his deceased father's classification was Class "C" and there are 46 vacant posts

of Technical Assistant Class 'C' in the Public Works Department and 41 vacant posts in Water Resources Department. However, on 10.11.2023 and 20.12.2023, the petitioner was informed that appointments on compassionate grounds could only be made if regular vacancies were available, and it was not possible to immediately appoint him due to non-availability of such vacancies.

8. The Petitioner seeks direction against the respondents to consider his appointment in Class "C" category in various departments of Government of Goa without any delay. He contends that despite the availability of vacancies, he has not been offered a compassionate appointment. Aggrieved by the impugned communication dated 10.11.2023 and 20.12.2023, the petitioner filed the present petition.

9. The respondents have filed a reply contending that a scheme for compassionate appointment was notified by the State Government of Goa vide Notification dated 02.08.2023. The petitioner is currently placed at serial number 68 on the seniority waitlist of candidates for compassionate appointments. The Notification dated 02.08.2023 outlines parameters for considering appointments under the compassionate scheme, which allows for a maximum 10% of vacancies to be filled through compassionate appointments each year. The respondents assert that the petition

lacks merit, as the petitioner has not been denied appointment on compassionate grounds, nor has his claim been rejected.

SUBMISSIONS

10. Learned counsel Ms Swati Kamat Wagh for the petitioner argues that the petitioner is governed by the State Government Scheme for compassionate appointments as per the Notification dated 02.08.2023. The communications dated 10.11.2023 and 20.12.2023 have resulted in the petitioner being kept in limbo under the pretext of unavailability of regular vacancies. She points out that the information received under the Right to Information Act, indicates that regular vacancies exist that correspond to the petitioner's qualifications.

11. It is submitted that the petitioner's father was the sole breadwinner, and in the absence of any financial support, the petitioner has repeatedly requested consideration for compassionate appointment. The petitioner since the date of application in the year 2016 is pursuing his case and requesting respondents /authorities to expedite his appointment on compassionate ground. There are various correspondences exchanged between the petitioner and Government authorities from 13.06.2022 to 16.10.2022. On 10.11.2023, the petitioner

was informed that his case could not be considered due to unavailability of vacancies, and he is placed at serial No.127.

12. She further submits that the petitioner had requested respondents No.1 and 3 to recommend his appointment for the post of Assistant Sub-Inspector (Wireless Operator), but was informed by respondent No.2 that no request has been received from the Police Department for filling up the post on compassionate grounds. The Superintendent of Police (HQ) Panaji Goa informed the petitioner that since his father worked in the PWD Department, the proposal was forwarded to respondent no. 2, and thus, the Police Department was not the competent authority to allot a job to the petitioner on compassionate grounds. Despite various vacancies in the Government of Goa Departments, the petitioner has not been considered for appointment on compassionate grounds depriving his legitimate appointment to available posts.

13. Learned counsel for the petitioner highlights that in the waitlist of compassionate appointment dated 09.08.2022, the petitioner is shown at Serial No.138 and the candidates mentioned at Serial No.145 – Smt Manisha M. Soliyekar, Serial No.166- Pankaj Usgaonkar, Serial no.192 Gautam G. Naik and Serial No.199 Kum. Shraddha R. Kelkar have been given appointments

indicating an unfair and unjust selection process. The delay in considering the petitioner for the compassionate appointment has exacerbated his financial hardship. Moreover, she submits that as the candidates below the petitioner in the seniority list dated 9.08.2022 were selected and given appointment letters considering their educational qualifications required for their respective posts, a similar approach can certainly be adopted in the case of the petitioner by considering his selection to any of the post “C” category.

14. Learned counsel for the petitioner has cited the following decisions to support her case:

1. *Balbir Kaur and another Vs Steel Authority of India Ltd., and others reported in (2000) 6 SCC 493;*
2. *Bhawani Prasad Sonkar Vs Union of India and others reported in (2011) 4 SCC 209;*
3. *Malaya Nanda Sethy Vs State of Orissa and others reported in 2022 SCC OnLine SC 684;*
4. *Shubham Vs State of Maharashtra and others in Writ Petition No.3187/2022 of High Court of Bombay (Nagpur Bench);*
5. *State of West Bengal Vs Debabrata Tiwari and others reported in 2023 Livelaw (SC) 175;*

6. *State of Tamil Nadu and others Vs C. Arnold of Madurai Bench of Madras High Court W.A.(MD) No.4792024 and C.M.P. (MD) No.3875/2024;*

7. *Delhi Jal Board Vs Nirmala Devi reported in (2022) 10 SCC 696.*

15. Learned Government Advocate for the respondents Mr. Salkar contended that the Government of Goa has formulated a scheme for compassionate appointment vide Office Memorandum No.10/1/86-PER (Part) dated 26.08.2005 for dependants of Government servants who die in harness or retire on medical grounds, to alleviate financial distress. He emphasizes that the scheme has undergone various amendments to enhance transparency and efficiency. There have been various amendments to the aforesaid scheme vide Corrigendum dated 29.09.2008, Office Memorandum dated 28.01.2010; Office Memorandum dated 13.04.2012; Office Memorandum dated 11.02.2013; and Office Memorandum dated 01.12.2015. The appointments under the above scheme are made at the centralized level through the Personnel Department w.e.f. 05.12.2007. He further stated that presently the amended scheme for grant of compassionate appointment vide Notification dated 02.08.2023 which came into effect on 01.04.2017, is being considered by the respondents to

immediately consider the candidates who applied for compassionate appointment.

16. Learned counsel for respondents urged that as per the data maintained by the Department of Personnel as on date, there are 658 claims which are duly completed in all respects and are figuring in the Waitlist maintained by the Department of Personnel and as an when the vacancies under the compassionate appointment arise the same are to be filled as per the seniority in the Waitlist maintained by the Department of Personnel. He further contended that the petitioner's application was received by the Department of Personnel, Government of Goa, from the Public Works Department on 27.03.2018, and upon scrutiny of the said case/application, the claim was placed at serial No.444 maintained by the Department of Personnel. He submits that as of now the petitioner is figuring at serial No.68 as per the seniority Waitlist maintained by the Department of Personnel. Therefore, it is incorrect for the petitioner to allege that the respondents have not at all considered the petitioner's claim. The name of the petitioner has progressed and at present, he is placed at serial number 68.

17. The Learned Government Advocate submits that as per the compassionate appointment scheme dated 02.08.2023, the

appointment on compassionate grounds should be made only on a regular basis and that too only, if the regular vacancies meant for that purpose are available. At present, due to unavailability of the required vacancy, the appointment of the petitioner is awaited. He submits that the claim of the petitioner has not been rejected by the respondents; quite to the contrary the same would be considered as and when there would be availability of vacancy as per the seniority Waitlist maintained by the respondents. Learned counsel for respondents relied on the following decisions in support of his case.

1. *Ganesh Bhimrao Munjal Vs State of Maharashtra and others reported in 2014(6) Mh. L. J. 142;*
2. *Union of India Vs Joginder Sharma reported in (2002) 8 SCC 65;*
3. *Life Insurance Corporation of India Vs Asha Ramchandra Ambekar and another reported in (1994) 2 SCC 718;*
4. *Sanjay Jagannath Patil Vs State of Maharashtra and others reported in 2007 SCC OnLine Bom 183;*
5. *M. Kendra Devi Vs Government of Tamil Nadu and others reported in (2022) 12 SCC 143;*

6. *Umesh Kumar Nagpal Vs State of Haryana and others reported in (1994) 4 SCC 138;*
7. *Ravindra Vs State of Maharashtra and another reported in 2021 SCC OnLine Bom 9901.*

ANALYSIS AND CONCLUSION

18. The compassionate appointments are not a vested right but a concession to assist families facing financial hardship due to the death of a breadwinner. Such appointments must undergo proper scrutiny based on established guidelines to ensure fairness and transparency.

19. Clause 11 of the said scheme notified on 02.08.2023, stipulates as under:

(a) Appointment on compassionate grounds should be made only on regular basis and that too only, if regular vacancies meant for that purpose are available.

(b) Compassionate appointments shall be made only against direct recruitment vacancy in the concerned Department/Office in which such vacancy is available. Further, compassionate appointments can be made up to 10% of vacancies falling under direct recruitment in any

group 'C' post in a year. Not more than 10% of vacancies in the aforesaid categories to be filled by direct recruitment in a year would be utilized by Appointing Authority for making appointments on compassionate grounds. However, applications of compassionate appointment relating to Armed Forces shall be received centrally by Personnel Department and allocated by it to various Departments where vacancy(ies) exist for consideration and decision on appointment as per this scheme.

- (c) A person selected for appointment on compassionate grounds should be adjusted in the recruitment roster against the appropriate category, viz., SC/ST/OBC/General depending upon the category to which he belongs. For example, if he belongs to SC category, he will be adjusted against the SC reservation point and, if his belongs to General category, he will be adjusted against the vacancy point meant for General category.
- (d) Ordinarily, cases of compassionate appointment shall be considered in the order of seniority i.e. case of compassionate appointment of the dependent of a Government servant who applied earlier would be processed and decided first and so on. Further, compassionate appointment shall be made as per seniority in the approved list, list being arranged in the

ascending order with respect to the date for application i.e. those who applied earlier shall figure up in the list. Any violation of seniority without credible justification shall be viewed seriously.

Provided that priority shall be given to those cases where a Government servant dies in an accident while performing duties.

20. A bare perusal of Clause 11 of the Notification dated 02.08.2023 would demonstrate that the submission regarding the selection of candidates placed below the petitioner in the seniority list dated 09.08.2022 is based on a misinterpretation of the scheme. Those candidates were appointed according to the recruitment rules for their respective posts, which required specific qualifications that the petitioner does not possess. The candidate Smt. Manisha Soliyekar was recommended for a job on compassionate appointment in terms of the provisions of the scheme that priority shall be given to those cases where the Government servant dies in an accident while performing duties. Hence, we do not find that there is any illegality on the part of the respondents.

21. The petitioner as on date is figuring at serial No.68 as per the seniority waitlist maintained by the Department of Personnel. The respondents have to consider the waitlist of candidates maintained by them in the ascending order with respect to the date of their applications. If the petitioner is provided with compassionate appointment out of turn, then it would cause serious prejudice to the other waitlisted candidates who are placed above the petitioner and would amount to discrimination.

22. In *Bank of Baroda Vs. Baljit Singh, reported in 2023 SCC Online SC 745*, the Hon'ble Supreme Court reiterated that the appointment of a candidate on a compassionate basis does not create any vested right and that it is only when the candidate is covered under all the clauses of the scheme applicable at the relevant time then he/she could be considered for compassionate appointment. Placing reliance on the *State of Himachal Pradesh vs. Prakash Chand, reported in (2019) 4 SCC 285*, which held that a direction by the High Court to consider cases for compassionate appointment other than the terms of the policy is impermissible, as it would amount to re-writing the terms of the policy, Their Lordships observed that this aspect has been overlooked by the High Court. Their Lordships referred to *Indian Bank Vs. Promila, reported in (2020) 2 SCC 729* wherein it was observed that eligibility for compassionate

appointment must be as per the applicable scheme and the courts cannot substitute a scheme or add or subtract from the terms thereof in the exercise of judicial review.

23. In a decision of recent origin, the Hon'ble Supreme Court in *Tinku Vs. State of Haryana and others, reported in 2024 (8) Supreme 570* made the following observations in paragraph Nos.10 and 11.

*“In the catena of judgments, the Hon'ble Supreme Court has clearly laid down the principles which govern such claims. Some of which are **Shanti Sports Club Vs. Union of India, Chandigarh Administration Vs Jagjit Singh, R Muthukumar Vs TANGEDCO, Basawaraj & Anr Vs Special Land Acquisition Officer.** The very idea of equality enshrined in Article 14 is a concept clothed in positivity based on law. It can be invoked to enforce a claim having sanctity of law. No direction can, therefore, be issued mandating the State to perpetuate any illegality or irregularity committed in favour of a person, an individual, or even a group of individuals which is contrary to the policy or instructions applicable. Similarly, passing of an illegal order wrongfully conferring some right or claim on someone does not entitle a similar claim to be put forth before a court nor would court be bound to accept such plea. The Court cannot ignore the law, nor can it overlook the same to confer a right or a claim that does not have legal sanction.*

Equity cannot be extended, and that too negative to confer a benefit or advantage without legal basis or justification.”

24. In this background, reliance of learned counsel for the petitioner on the judgments referred supra far from assisting the case of the petitioner actually militates against him. The facts in *Balbir Kaur and another (supra)* relied by learned counsel for the petitioner indicating that the Family Benefit Scheme was introduced to deny compassionate appointments to the dependent of the deceased employees. The Hon'ble Supreme Court emphasized that compassionate appointments serve a distinct purpose and should not be equated with benefits provided under the Family Benefit Scheme and held that denying compassionate appointment would be unreasonable.

25. In *Bhawani Prasad Sonkar (supra)*, the case of the appellant was not at all considered for compassionate appointment. In *Malaya Nanda Sethy (supra)*, the Hon'ble Supreme Court noted a conflict of views of the Supreme Court concerning the scheme applicable for consideration of an application for grant of compassionate appointment, in that context noted that one view was that the scheme prevailing on the date of death should govern plea while the other view is that the scheme prevailing on the date

of consideration of the application should be the guiding factor. The question of the scheme's applicability was kept open. In the peculiar facts and circumstances of the case, Their Lordships' directed the applicant should not be denied compassionate appointment under the 1990 Rules.

26. This Court's order in *Shubham vs State of Maharashtra and others in Writ Petition No.3187/2022, (Nagpur Bench)* would not apply to the case at hand. In the said case the petitioner was seeking direction against the Zilla Parishad, Gondiya to substitute his name in place of his mother in the waitlist maintained as regards the candidates seeking appointments on compassionate ground. As per the State Government policy, the substitution of the name in the waitlist for candidates seeking compassionate appointments is not permissible. The petitioner was claiming to add his name in the waitlist as the name of his mother was deleted after attaining the age of 45 years. This Court observed that there is a delay in preferring the application for substitution of his name and the family has sustained till the date of the application and therefore, granting permission would amount to defeat the very purpose and object of the policy. The writ petition was rejected by this Court.

27. In *State of West Bengal (supra)*, the Hon'ble Supreme court after appreciating the facts and legal submissions arrived at the

conclusion that the appeals succeed on two counts “first, there was no policy existing to govern compassionate appointment to posts under local authorities in the State of West Bengal and hence, in the absence of such a policy, compassionate appointment cannot be granted; second, assuming that there was such a policy, it would be of no redeeming purpose to direct that the applications for appointment on compassionate grounds be considered and decided several years after they were filed. Hence the case is not applicable as the above observations were made in the facts which are totally unlike the case at hand.

28. In *State of Tamil Nadu and others Vs C. Arnold of Madurai* Bench of Madras High Court W.A.(MD) No.4792024 and C.M.P. (MD) No.3875/2024; the Court was dealing with the rejection of the application for compassionate appointment and hence distinguishable.

29. In *Delhi Jal Board (supra)*, the Hon'ble Supreme Court highlighted the importance of considering the educational qualifications of candidates when making compassionate appointments. In the instant case the respondents have categorically submitted that whenever there arises a vacancy equivalent to the qualification of the petitioner, he will be considered.

30. In *Ganesh Bhimrao Munjal (supra)*, this Court found that the 2011 Rules clearly superseded the 2006 Rules, and any recruitment after the effective date of the new rules must comply with them. The Court emphasized that compassionate appointments are not a right but a concession that can be modified or abolished by the employer.

31. In *Union of India Vs Joginder Sharma (supra)*, the Hon'ble Supreme Court reinforced the principle that the compassionate appointments process must follow the established guidelines without judicial compulsion. In *Life Insurance Corporation of India (supra)*, the Hon'ble Supreme Court held that courts cannot order appointment on compassionate grounds de hors the provisions of statutory regulations and instructions.

32. In *Sanjay Jagannath Patil (supra)*, this Court held that the petitioner got the benefit of compassionate appointment but the insistence of the petitioner that he ought to have been appointed to a particular post like others does not deserve consideration. Moreover, appointment on compassionate ground cannot be claimed as a matter of right.

33. The decision in *M. Kendra Devi (supra)*, would not be applicable in the present case as the issue before Hon'ble Supreme

Court was regarding seniority among Assistant Engineers appointed on compassionate grounds versus those appointed through direct recruitment. In *Umesh Kumar Nagpal Vs State of Haryana and others*; and *Anil Malik Vs. State of Haryana and others*; the Hon'ble Supreme Court emphasised the need for adherence to established legal principles regarding compassionate appointments, rejecting any interpretations that allow for deviations from the stipulated guidelines. This Court in *Ravindra (supra)* observed that when it is seen that in spite of not providing compassionate appointment to any member of the family, the family manages to survive itself not for few months but for several years together, such family would not be in need of any compassionate appointment and members of such family then would be required to go through the due process of selection, if any of them is interested in getting public appointment.

34. Thus, upon considering the entire conspectus of the matter we are of the view that the object of compassionate appointment is to relieve the hardship due to the death of a bread winner in the family and the appointment is provided to redeem the family in distress. At the same time, it is to be borne in mind that compassionate appointment cannot be construed as opening an alternative mode of recruitment to public employment. Of course,

a Court of Law is to make endeavour whether a particular case in which sympathetic consideration are to be weighed within the ambit of law.

35. It should be mentioned that if the petitioner is provided with compassionate appointment out of turn, then it would cause serious prejudice to the other wait listed candidates and also it will amount to discrimination. Moreover, similarly situated candidates are placed above the petitioner in the waitlist are still waiting in queue to secure appointments.

36. We are of the opinion that the respondents are considering the claim within the framework of the compassionate appointment scheme, and the petitioner's claim is pending consideration. Granting the petitioner an appointment out of turn would prejudice other candidates on the waitlist and violate the principles of fairness and equality. The Court cannot compel the respondents to deviate from the established guidelines for compassionate appointments. The petitioner's claim for the compassionate appointment cannot be considered outside the terms of the notification dated 02.08.2023.

37. We are not inclined to entertain the petition. The respondents shall undoubtedly consider the petitioner's case in

accordance with the scheme as notified on 02.08.2023 in his own turn. The petition is disposed of. There shall be no order for costs. Rule stands discharged.

NIVEDITA P. MEHTA, J

M. S. KARNIK, J