



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5324 OF 2024

Shaikh Karim Shaikh Haroon
Age: 35 years, Occu: Nil
R/o: Medical Quarters, Ghati area,
Aurangabad (Ch. Sambhajinagar)
Tq. & Dist. Aurangabad.
(Ch. Sambhajinagar)

... Petitioner

V/s.

1. The State of Maharashtra
Through Secretary, Health Department,
Mantralaya Mumbai - 32
2. The Directorate of Medical Education
and Research Maharashtra State,
Mumbai-400 001 Through its Director.
3. The Dean,
Government Medical College and
Hospital Ch. Sambhaji Nagar (Aurangabad)
Tq. & Dist. Ch. Sambhaji Nagar (Aurangabad).

... Respondents

...
Mr. Azizoddin R. Syed, Advocate for the Petitioner
Mr. A.B. Girase, GP for the Respondent-State
...

CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.
DATE : 10th June, 2024

ORAL JUDGMENT (Per: Ravindra V. Ghuge, J.):-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. The Petitioner is equipped with a caste certificate dated 05.12.2009, indicating his caste as Muslim Bhangi (7) recognized as Special Backward Class and he also has a validity certificate dated 15.03.2010.

3. We have considered the strenuous submissions of the learned advocate for the Petitioner and the learned GP.

4. To consider the claim of the Petitioner, we have to referred to his family tree, which indicates as under:

- a) Shaikh Hussain is the great grandfather of the Petitioner.
- b) Shaikh Karim Shaikh Hussain is the grandfather of the Petitioner.
- c) Shaikh Haroon Shaikh Karim is the father of the Petitioner.
- d) The Petitioner is Shaikh Karim Shaikh Haroon.

5. The contention of the Petitioner is that the GR dated 24.02.2023, contains certain provisions which allow compassionate appointment or employment by inheritance (VAARSAA HAKKA or VAARIS or VASHILA PADDHAT) to several members of the family, notwithstanding whether the head/bread earner of the family is in employment.

6. It is the submission of the Petitioner that his great grandfather Shaikh Hussain was employed with the Health Department. His grandson

Shaikh Haroon sought compassionate appointment in place of his grandfather Shaikh Hussain on the basis of the Lad Page Committee recommendations, notwithstanding that the father of Shaikh Haroon, namely Shaikh Karim s/o Shaikh Hussain was actually continuing in the employment with the department. According to the Petitioner, since Shaikh Haroon (father of the Petitioner) acquired compassionate appointment on the basis of the employment of his grandfather Shaikh Hussain, the Petitioner Shaikh Karim now seeks compassionate appointment on the basis of the employment of his grandfather Shaikh Karim Shaikh Hussain. The Petitioner further adds that his grandfather died on 05.10.1983, which is 41 years ago. The Petitioner, who is 35 years ago, was born in 1989. His father Shaikh Haroon is still in employment and yet the Petitioner prays for compassionate employment on the basis of the Lad Page Committee recommendation and the GR dated 24.02.2023, when he is actually dependent financially on his father who is presently employed and is drawing full salary.

7. The learned GP has vehemently opposed this petition contending that the GR dated 24.02.2023 does not permit such type of inheritance in employment, meaning a grandson seeking employment on his grandfather being in employment 41 years ago or the father of the Petitioner having

succeeded in getting compassionate appointment on the employment of his grandfather, when his father was alive and continuing in employment.

8. We have perused Clause 2 and 3 of the GR, which read as under:

"2. सफाई कामगारांकरिता वारसाहक्काची तरतूद :

शासकीय / निमशासकीय / महानगरपालिका / नगरपालिका / नगरपरिषद / कटक मंडळे / राज्य शासनाची महामंडळे / राज्य शासनाच्या स्वायत्त संस्था / Parastatal संस्था / अनुदानित संस्था, शासकीय रुग्णालये, वैद्यकीय महाविद्यालये, पशुवैद्यकीय महाविद्यालये इ. आस्थापनांमधील उपरोक्त (1) येथे नमूद व्याख्येनुसार सफाई कामगारांना त्यांच्या सेवानिवृत्तीनंतर, मृत्युनंतर, स्वेच्छा निवृत्तीनंतर किंवा त्यांना वैद्यकीयदृष्ट्या अपात्र ठरविल्यानंतर सफाई कामगारांचे आर्थिक नुकसान होऊ नये व त्याचे कुटुंब बेघर होऊ नये आणि त्यास सामाजिक संरक्षण प्राप्त होण्याच्या दृष्टीने, लाड समितीच्या शिफारशीनुसार संबंधित सफाई कामगारांच्या जागी त्यांच्या वारसाची नियमानुसार वारसा हक्काने नियुक्ती करण्याची कार्यवाही करावी.

3. वारसा हक्कास पात्र ठरणारे सफाई कामगारांचे वारस : —

सफाई कामगारांच्या वारसा हक्क प्रकरणांत पुढीलपैकी एक व्यक्ती वारस म्हणून पात्र ठरेल.

3.1 पती / पत्नी

3.2 मुलगा / मुलगी

3.3 सून / जावई

3.4 विधवा मुलगी / बहिण / घटस्फोटित मुलगी / बहिण / परित्यक्ता मुलगी / बहिण / अविवाहित सज्जान मुलगी / अविवाहित सज्जान बहिण

3.5 सफाई कर्मचारी अविवाहित असल्यास त्याचा " सख्खा भाऊ / सख्खी बहिण "

3.6 नात / नातू "

9. Clause 2 clearly indicates that if an employee working as a 'Safai Kamgar' retires or dies in employment or opts for voluntary retirement on the

basis of a medical infirmity, his family should not be thrown on the streets and to provide immediate succor to the family who has lost the bread earner, a spouse or son / daughter or daughter in law / son in law or widowed daughter, divorced daughter, sister, unmarried adult daughter or unmarried adult sister can be an eligible candidate. Grand children are also eligible.

10. It cannot be ignored that under Clause 3, only one of the eligible candidates can be appointed as a compassionate appointee and such one candidate could be a grandson / granddaughter or any of those mentioned in the above re-produced clauses.

11. The learned advocate for the Petitioner relies upon Clause 5.8 to contend that his great grandfather was in employment and, hence, his father rightly acquired compassionate appointment on the Lad Page Committee recommendations in relation to the employment of such great grandfather. It is further contended that though the Petitioner's father acquired such employment on the basis of his grandfather's appointment and though the Petitioner's father is still in employment, the Petitioner is entitled for such compassionate appointment / appointment on Lad Page Committee recommendations on the basis of his grandfather's employment as the latter died on 05.10.1983, which is 41 years ago. In short, he contends that clause 5.8 permits his father to seek employment in place of his great grandfather, on

the one hand and on the other hand, the Petitioner can claim compassionate employment on the basis of his grandfather's employment, though his father is today in employment and is the bread earner of the family. It is undisputed that the Petitioner is a biological child of Shaikh Haroon who is in employment, he was dependent on Shaikh Haroon and never on his grandfather, who passed away on 05.10.1983, almost six years prior to the Petitioner's birth.

12. For ready reference, we are re-producing Clause 5.8 as under:

"5.8 सफाई कामगाराच्या कुटुंबातील सेवेत असणा-या वारसांच्या नियुक्तीबाबत :- सफाई कामगाराच्या कुटुंबातील पती/पत्नी किंवा मुलगा /मुलगी इ. व्यक्ती अथवा अन्य व्यक्ती षासकीय /निमषासकीय स्थानिक स्वराज्य संस्थेच्या/अनुदानित संस्थेच्या सेवेत असल्यास, संबंधित सफाई कामगाराच्या वारसा हक्काच्या नियमास बाधा येणार नाही. "

13. The learned GP submits that Clause 5.8 has to be read in the light of Clause 2, meaning thereby that the person seeking such employment should be a dependent of the deceased employee or the employee who has superannuated or has sought voluntary retirement on medical reasons, will have to nominate a close relative within the permissible relations prescribed in Clause 3. Based on such nomination, the employment could be sought. He hastens to clarify that this would not mean that the father of the Petitioner is in employment and the Petitioner seeks employment on the basis of the grandfather having passed away.

14. We do not find that the claim of the Petitioner is well placed in the light of the fact that 5.8 clearly provides that even if the close relative of a 'Safai Kamgar' is in Government or Semi Government Authorities or employed with the local Authorities, it would not be an impediment for a candidate to seek employment on the basis of the Warsaa Hakka (Right of Inheritance) which is also known as the Vashila Paddhat (Special Recommendation) in the State of Maharashtra.

15. The Petitioner's father is a 'Safai Kamgar' and is still in employment. His grandfather was also a 'Safai Kamgar' and so was his great grandfather. According to the Petitioner, though his father is in employment as a 'Safai Kamgar', based on the Lad Page Committee recommendations, there is no impediment to the Petitioner in claiming such employment in view of the fact that his grandfather was in employment on 05.10.1983. We are fortified in our conclusion that the Petitioner cannot claim such employment, by the judgment of the Hon'ble Supreme Court in **Ahmednagar Mahanagarpalika V/s. Ahmednagar Mahanagarpalika Kamgar Union; 2022 III CLR 859**. The Hon'ble Supreme Court has held as under:

"5. We have heard learned counsel for the respective parties at length.

At the outset, it is required to be noted that in the present case, the Industrial Court has directed the Mahanagar Palika/Municipal Corporation to give appointment to the heirs of the employees on their superannuation/retirement as per judgment and award passed in Reference IT No. 51 of 1979. However, it is required to be noted that the said judgment

and award was passed in the year 1981, at the time when the Municipal Council was in existence. That thereafter in the year 2003, the Municipal Council has been converted to Municipal Corporation/Mahanagar Palika and all the employees under Mahanagar Palika/Municipal Corporation are governed by the scheme/rules & regulations framed by the State Government, which does not provide for any appointment on compassionate grounds or the appointment to the heirs of the employees on their superannuation/retirement.

6. *Even otherwise, it is required to be noted that in Reference (IT) No. 2/1993, which was at the instance of Mahanagar Palika on the notice of change in respect of demand of employment to the heirs of the employee as per Reference (IT) No. 51 of 1979, the Industrial Court vide judgment and award dated 21.02.2005 directed the appointment on compassionate grounds to the heirs of the deceased employees only. It was specifically observed by the Industrial Court that at the time of passing earlier award in Reference IT No. 51 of 1979, i.e., in the year 1979 the demand to provide the employment to the legal heirs of the employees on their retirement/superannuation was reasonable, however, in the present situation the said demand does not appear to be good and reasonable. The Industrial Court further observed that, needless to say, now-a-days the unemployment problem is a very major problem and in spite of high qualifications the qualified persons are not getting jobs and they remain unemployed. While modifying the demand and directing to provide appointment on compassionate grounds to the legal heirs of the employees (on the death of the concerned employee), in judgment and award dated 21.02.2005 in Reference IT No. 2/1993, it was observed by the Industrial Court as under:*

“It seems from the oral submissions of the parties that, at the time of passing earlier award in Ref. (IT) No. 51/1979 i.e., in the year 1979 the demand for providing the employment to the legal heir of employee was reasonable however in present situation the said demand does not appears to be good and reasonable. Needless to say, that nowadays the unemployment problems is very major. In spite of high qualifications, the qualified persons are not getting job and they are unemployed. In view of this demand there is no scope for qualified unemployed person to get the job in the establishment of the party no. 1, as the legal heirs of the employees will get the job in place of the employee working in the establishment of the party no. 1. Mr. Patil learned advocate for the party no. 1 rightly submitted that on the basis of this demand the legal heirs are claiming employment on attaining the majority and if the legal heir is minor at the time of superannuation and that too after

10 years also under such circumstances in my opinion also the demand of providing employment to the legal heirs does not appears to be proper.

It has sufficiently come on record through the oral evidence of the parties that as per this demand the employment has been claimed as of right and there is no scope for selection of proper candidate, even the guidelines of the government regarding Reservation could not be followed. It is pertinent to note here that, as per the government policy certain post in the establishment are reserved for back ward classes and on those post- employment is to be given to the candidate from reserve category however as there is no scope for employment to others, therefore, it is very difficult for the candidates from reserve category to get employment in the establishment of the party no. 1.

It has also come on record that, as per this demand the employment is being claimed for distant relative on the basis of adoption. True it is that the adoption can be made as per law and after adoption the adopted child because legal heir of that person however it seems from the various copies of documents placed before the Court that employment has been claimed for nephew on the basis of affidavit saying that the nephew is taking care of that employee. Similarly, in another matter the employment is sought for adopted son by application dated 02.05.1997 and deed of adoption has been executed on 30.04.1997.

From these documents it can be said positively that the demand or providing employment to the legal heirs of the employees has been misused. Furthermore, nothing has been placed on record on behalf of the party no. 2 union that such practice is being continued in any other establishment. The witness of the party no. 2 union specifically asked about the however he could not brought any documentary evidence.

In my opinion also even though this demand was reasonable in 1979 however the same is certainly not reasonable and justified during present days and in the light of misuse of the demand it can be safely said that the party no. 1 is justified in seeking change in the demand in respect of providing the employment to the legal heirs of the employees on superannuation, invalidity or resignation, be now I am inclined to modify the demand and directing the party no. 1 to provide (1) employment to the legal heirs of the employees of Class-IV category working in health department only (2) to provide the employment to the legal heirs of all categories i.e. Class-I category to Class-IV category on compassionate ground as per government Resolutions and circulars at par with governments employees.”

In view of the above also, thereafter it was not open for the Industrial Court and/or even the High Court to direct the Mahanagar Palika/Municipal

Corporation to provide appointment to the heirs of the employees on their retirement/superannuation, relying upon the judgment and award passed by the Industrial Court in Reference IT No. 51 of 1979.

7. *After the conversion of the Municipal Council to Municipal Corporation/Mahanagar Palika, the employees of the Mahanagar Palika/Municipal Corporation shall be governed by the scheme framed by the State Government and at par with the government employees. As per the recent decision of this Court in the case of Bheemesh alias Bheemappa (supra), the appointment on compassionate ground shall be as per the modified scheme. Therefore, the employees of the Mahanagar Palika/Municipal Corporation shall be governed by the scheme of the State Government at par with the government employees, which does not provide for appointment on compassionate grounds to the heirs of the employees on their retirement and/or superannuation.*

8. *Even otherwise, such an appointment to the heirs of the employees on their retirement and/or superannuation shall be contrary to the object and purpose of appointment on compassionate grounds and is hit by Article 14 of the Constitution of India. As observed and held by this Court in a catena of decisions, compassionate appointment shall always be treated as an exception to the normal method of recruitment. The appointment on compassionate grounds is provided upon the death of an employee in harness without any kind of security whatsoever. The appointment on compassionate grounds is not automatic and shall be subject to the strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. No one can claim to have a vested right for appointment on compassionate grounds. Therefore, appointment on compassionate grounds cannot be extended to the heirs of the employees on their superannuation and/or retirement. If such an appointment is permitted, in that case, outsiders shall never get an appointment and only the heirs of the employees on their superannuation and/or retirement shall get an appointment and those who are the outsiders shall never get an opportunity to get an appointment though they may be more meritorious and/or well educated and/or more qualified. Therefore, the submission on behalf of the respondent that the appointment is not on compassionate grounds but the same be called as varas hakka cannot be accepted. Even if the same be called as varas hakka the same is not supported by any scheme and even the same also can be said to be violative of Article 14 as well as Article 15 of the Constitution of India.”*

16. In view of the above, we do not find that the refusal by the Government Medical College, Chhatrapati Sambhajnagar to grant employment to the Petitioner, vide the impugned order dated 14.03.2024, could be termed as being erroneous. **This Writ Petition is therefore dismissed. Rule is discharged.**

17. At this juncture, the learned advocate for the Petitioner submits that if the father of the Petitioner retires or has to leave employment in any unfortunate situation, the right of the Petitioner to seek employment on the basis of Warsaa Hakka / Vashila Paddhat, as compassionate appointment, the dismissal of this Petition should not be an impediment. We make it clear that this order would not be an impediment to the Petitioner to seek enforcement of any right if it flows to him through his father.

[Y.G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]