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23-WP-8600-2021

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

23 WRIT PETITION NO. 8600 OF 2021

Mahek Laxman Pusollu

...Petitioner

VERSUS

The State Of Maharashtra And Others

...Respondents

...

Mr. Vitthal G. Salgare, Advocate for the Petitioner.

Mr. R. S. Wani, AGP for Respondent-State.

Mr. R. M. Bhagwat h/f Mr. G. P. Shinde, Advocate for Respondent No.5.

**CORAM : KISHORE C. SANT &
JITENDRA JAIN, JJ.**

DATE : 22nd SEPTEMBER 2026.

PC :-

1. Heard Mr. Salgare, the learned Advocate for the petitioner, Mr. Wani, the learned AGP for Respondent/State and Mr. Bhagwat h/f Mr. Shinde, the learned Advocate for Respondent No.5.

2. A short grievance of the petitioner in this petition is that though the petitioner is appointed on compassionate ground on class-IV post, he has not been given an appointment or promotion on class-III post considering his qualifications.

3. The facts in short are that the father of the petitioner was working as “*Kamathi*” with Respondent No.5 which happens to be class-IV post. He unfortunately died on 20/02/2016. The petitioner applied for compassionate appointment in place of his father. However, his application was rejected by respondent No.5 on the ground that the post to which the petitioner’s father was appointed is abolished and further that he was taken into service as special case with condition that after his retirement, the post would be abolished. The petitioner therefore was required to approach this Court by filing WP/9334/2017. This Court vide judgment and order dated 02/12/2019 directed respondent No.5 to give appointment to the petitioner to any class-IV post. After the decision in the writ petition, the petitioner came to be appointed to the post of *Safai Kamgar* by respondent No.5 on 30/09/2020.

4. Now, it is the case of the petitioner that in view of Government Resolution dated 23/08/1996, the petitioner be given an appointment or promotion to class-III post as the petitioner possesses qualifications as H.S.C. and MS-CIT. He has also passed typing examination in English and Marathi. The petitioner is thus qualified to be appointed to any

class-III post on the basis of this Government Resolution. Petitioner also relies upon judgment in the case of *Shanti Devi and Ors. Vs. State of Haryana*¹ wherein the persons were given appointments to class-III posts on compassionate grounds. The petitioner, therefore, made representation. However, the same has not been considered and thus the petitioner has approached this Court.

5. Mr. Salgare, the learned Advocate for the petitioner, vehemently argued that by giving benefit of Government Resolution dated 20/08/1993 and looking to the qualifications of the petitioner, he ought to have been promoted to a class-III post. He also relied upon Government decision dated 11/07/2019. He submits that a person can be appointed to a class-III post even on compassionate grounds, if such person possesses requisite qualifications.

6. Learned Advocate for the petitioner further submits that when the petitioner had approached this Court in earlier round, it was specific case of the respondent that as there is no class-III post available, the petitioner could be considered only for class-IV posts. His appointment

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on class-IV post was thus only for the reason that there was no substantive post available in class-III category. He further relied upon judgment in the case of *Phoolwati Vs. Union of India and Ors.* in CA/5967/1990 dated 05/12/1990, wherein the Hon'ble Apex Court directed the respondent to give an appointment to the applicant to any suitable post commensurate with his educational qualifications within a period of one month from the date of this order. He thus submits that this is a fit case to direct respondent to appoint petitioner to any class-III post.

7. Learned Advocate for the respondent No.5 vehemently opposed the petition. He submits that the petitioner has accepted an appointment to a class-IV post, and therefore, there is no question to appoint him again on class-III post. Merely because, he possesses the qualifications for a higher post would not be sufficient to appoint him in class-III post. The petitioner has already accepted the appointment order dated 30/09/2020 for a class-IV post without any grievance. He again now claimed any appointment to class-III post. His representation is therefore not considered. He relied upon the judgment in CA/12640-

12643/2025 passed by the Hon'ble Apex Court in the case of *the Director of Town Panchayat and Ors. Vs. M. Jayabal and Anr. Etc.*. He thus submits that having once accepted one post, the petitioner cannot claim a higher post thereafter.

8. This Court has considered the submissions of both the parties. Undisputedly, when the petitioner filed earlier petition, he had prayed that he be appointed to any class-III or class-IV post, as is appearing in paragraph No.1 of the judgment in WP/9334/2017. That time also a question of qualification was considered by the Court. However, in the operative order, the Court clearly directed the respondents to absorb the petitioner on any class-IV post after completing necessary formalities under the Government Resolution. It is clearly seen that no grievance was made while accepting class-IV post. It is only on 10/02/2021, the petitioner made a representation to give him an appointment on class III post. The Government decision dated 23/08/1996 provides that the upgradation of a post of person appointed even on compassionate grounds, making it clear that in the appointment order itself, there should be a specific mention that whenever class-III post is become

available, the person would be entitled to get a promotion or appointment to a class-III post.

9. So far as judgment in the case of ***Phoolwati*** (supra) is concerned, the Hon'ble Apex Court in the order itself has directed to grant an appointment to a class-III post. This judgment would not help the petitioner. So far as judgment in the case of ***Shanti Devi and Ors. Vs. State of Haryana*** (supra), in the judgment itself it was made clear that the petitioner cannot be considered for a higher post in case rule permit and even rule does not permit by relaxing the rules.

10. So far as judgment in the case of ***the Director of Town Panchayat and Ors.*** (supra), paragraph No.10 reads as under:-

“10. In view of the law laid down by this Court, it stands clarified that the once the right of an applicant to be considered for appointment on compassionate grounds has been consummated, no further consideration is warranted. Once dependent of a deceased employee is offered employment on compassionate basis, his right stood exercised. Thereafter, no question arises for seeking appointment on a higher post. Otherwise, it would be a case of ‘endless compassion’.”

11. From this judgment, it is clear that once a person has exercised the right of appointment, there is no question of further consideration for

any higher post. In the present case also, having exercised the option of appointment on compassionate grounds, the petitioner thereafter cannot make a further prayer for another post. Thus, this Court finds no merit in the petition. Writ petition stands dismissed.

12. At this stage, the learned Advocate for the petitioner placed on record a Government Resolution dated 08/07/2008 wherein it is provided that a class-IV employee can be appointed to a class-III post by promotion. Such promotion is to be given on 25% of class-III posts. If the representation is made by the petitioner, the same can always be considered with all other aspects. The petitioner can always seek promotion, if he is otherwise eligible for a class-III post.

13. With these, writ petition stands disposed off.

[JITENDRA JAIN, J.]

[KISHORE C. SANT, J.]

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