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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10233 OF 2015

Qurban Ali Mohammad Ali Saiyed,
deceased through L.Rs.

- 1 Sohil Ali s/o Qurban Ali,
 Age : 37, Occ : Unemployed.
- 2 Sajid Ali s/o Qurban Ali,
 Age : 30, Occ : Agriculturist.
- 3 Khalid Ali s/o Qurban Ali,
 Age : 26, Occ : Labour.
- 4 Tauheed Ali s/o Qurban Ali,
 Age : 22, Occ : Labour.
- 5 Madeena Begam w/o Qurban Ali,
 Age : 60, Occ : Household.

All r/o Shaikhpura Mohalla, Chopda,
Taluka Chopda, District Jalgaon.

...PETITIONERS

-VERSUS-

- 1 Chief Engineer,
 Maharashtra State Electricity Distribution
 Company Limited, Nasik Road,
 Taluka and District Nasik.
- 2 Superintendent Engineer,
 Maharashtra State Electricity Distribution
 Company Limited,
 Savkare Building, Jamner Road,
 Beside Bank of India,
 Post Box No.17, Bhusawal,
 Taluka Bhusawal,
 District Jalgaon.
- 3 Executive Engineer,

Maharashtra State Electricity Distribution
Company Limited,
Bhadgaon Road, Post Box No.29,
Chalisgaon, Taluka Chalisgaon,
District Jalgaon.

...RESPONDENTS

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Advocate for Petitioners : Shri Naseem R. Shaikh.

Advocate for Respondents : Shri Adwant S.V. a/w Ms.Neha Kamble.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 14th December, 2015

Oral Judgment:

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

2 The Petitioners are aggrieved by the order dated 24.04.2015 delivered by the Industrial Court in Complaint (ULP) No.27/2008 thereby, rejecting the application Exhibit U/30 and refusing the prayer of the Petitioner No.1 to be brought on record as a legal heir of the original Complainant (deceased Qurban Ali), who is his father.

3 I have heard Shri Shaikh, learned Advocate for the Petitioners and Shri Adwant, learned Advocate for the Respondents at length.

4 Two issues have been raised by way of this petition. Firstly, whether, the right of the Petitioners to prosecute Complaint (ULP) No.27/2008 would survive despite the demise of their father Qurban Ali who was the original Complainant. Secondly, whether, the complaint stands partly allowed in the light of a categorical statement of the Respondents that the prayer of Petitioner No.1 (Sohil Ali) for being considered for appointment on compassionate basis has been considered after he was interviewed and he is enlisted at Sr.No.93 in the wait list of eligible candidates for appointment on compassionate basis.

5 With regard to the first issue, Shri Shaikh submits that the original Complainant (Qurban Ali) had preferred Complaint (ULP) No. 27/2008 before the Industrial Court at Jalgaon. He draws my attention to the prayers wherein, the original Complainant (deceased Qurban Ali) pleaded for appointing his son i.e. the present Petitioner No.1 on compassionate ground.

6 Shri Shaikh submits that the original Complainant (deceased Qurban Ali) was working on the post of Helper with the Respondents from 01.12.1981 till 25.07.2003. He had put in 22 years of service. On

24.05.2001 he met with an accident out of and in the course of employment with the Respondents. He suffered 100% disability as his backbone was fractured. He was retired from service on medical ground on 25.07.2003 owing to the said accident. He then filed Complaint (ULP) No.27/2008 before the Industrial Court on 17.03.2008. He passed away during the pendency of the complaint on 23.10.2014.

7 Shri Shaikh submits that in the light of the above backdrop, an application Exhibit U/30 was filed on 19.03.2015 wherein, the present Petitioner No.1 as the son and legal heir of the deceased Qurban Ali prayed to the Industrial Court for being arrayed as a complainant. By the impugned order dated 24.04.2015, the said application has been rejected.

8 He, therefore, submits that the Industrial Court has erroneously concluded that the cause of action does not survive on the demise of Qurban Ali and hence, the Petitioner No.1 will have no right to be arrayed as a legal heir of the Complainant and cannot be permitted to prosecute the complaint.

9 Shri Shaikh relies upon the judgment of the Apex Court in the case of *MGB Gramin Bank vs. Chakrawarti Singh*, **AIR 2013 SC 3365**. He, however, concedes that the Respondents have enlisted the Petitioner No.1

at Sr.No.93 in the wait list of eligible candidates for appointment on compassionate basis.

10 Shri Adwant, learned Advocate for the Respondents, does not dispute the facts in the light of the brief written notes of facts and submissions that he has tendered across the Bar.

11 His contention is that the cause of action was raised by the deceased father of the Petitioner No.1. Certain prayers were put forth by him. Under the MRTU & PULP Act, 1971, the prayers are related to the cause of action and the legal injury alleged to have been caused to the complainant on account of the purported acts of the Respondents.

12 He further submits that the right to sue which is construed to mean a right to seek relief or a right to bring the suit for claiming reliefs, would not survive and the complaint would stand abated by implication in the light of Order 22 Rule 1 of the Code of Civil Procedure. He adds that when the right to sue does not survive, the Petitioner No.1 could not have made an application for arraying him as a complainant in the light of Order 22 Rule 3(2) of the Code of Civil Procedure.

13 He further submits that the appointment in service on

compassionate ground will not survive as a right after the death of the original claimant. He submits that the complaint would stand abated with effect from the date of death of the original complainant.

14 He raises a point of jurisdiction with regard to the Industrial Court under the MRTU & PULP Act, 1971 on the ground that a claim or complaint can only be entertained by the Industrial Court if the Employer-Employee relationship exists. If no such relationship exists, the complaint is rendered untenable in law.

15 Shri Adwant has relied upon the judgment in the case of MGB Gramin Bank (supra).

16 I have considered the submissions of the learned Advocates as recorded above.

17 Normally, the right to sue may not survive in the light of Order 22 Rule 1 of the Code of Civil Procedure, which reads as under:-

“Order XXII : Death, Marriage and Insolvency of Parties:

1. *No abatement by party's death, if right to sue survives :- The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.”*

18 The Respondents have relied upon Order 22 Rule 3(2) of the Code of Civil Procedure, which reads as under:-

“Order XXII : Death, Marriage and Insolvency of Parties:

3. *Procedure in case of death of one of several plaintiffs or of sole plaintiff:-*

(1) *.....*

(2) *Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.”*

19 The whole issue, therefore, turns up as to whether, the complaint would abate if the right to sue does not survive. The facts are self explanatory. The deceased Qurban Ali filed the complaint before the Industrial Court not to claim the benefits under any settlement or any agreement or award, for himself. The whole complaint is based on the contention that Qurban Ali was medically retired on account of loss of 100% earning capacity, in other words 100% disability. He, therefore, put forth the claim on behalf of his son and prayed to the Industrial Court to direct the Respondents to grant appointment on compassionate basis to his son who is Petitioner No.1 herein.

20 In the light of the above, even if it is assumed for the sake of assumption that Qurban Ali was alive today and the complaint was allowed either fully or partly, the beneficiary would be the Petitioner No.1 herein since he would be appointed on compassionate basis.

21 In this peculiar situation, it is apparent that the claim set out in the complaint was aimed at granting reliefs to the instant Petitioner No.1 and not for Qurban Ali himself. The right to sue, in my view, therefore, survives since the ultimate beneficiary in the proceedings before the Industrial Court would be the present Petitioner No.1, if the complaint is allowed. As such, I conclude that the death of Qurban Ali would give a legal right to the Petitioner No.1 to pray for being arrayed as the Complainant in the light of he being the legal heir of the deceased Qurban Ali.

22 The observations of the Apex Court in the case of MGB Gramin Bank (supra) relating to the cause of action as set out in paragraphs 12 and 13, read as under:-

“12. A scheme containing an *in pari materia* clause, as is involved in this case was considered by this Court in *State Bank of India & Anr. vs. Raj Kumar* (2010) 11 SCC 661. Clause 14 of the said Scheme is verbatim to clause 14 of the scheme involved herein, which reads as under:

“14. Date of effect of the scheme and disposal

of pending applications:

The Scheme will come into force with effect from the date it is approved by the Board of Directors. Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Board will be dealt with in accordance with Scheme for payment of ex-gratia lump sum amount provided they fulfill all the terms and conditions of this scheme.”

13. *The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr. (supra), this Court held that in such a situation, the case under the new Scheme has to be considered.”*

23 There is no dispute as regards the prayer set out in the complaint that the present Petitioner No.1 be inducted in employment on compassionate basis. There is, however, a prayer made for granting retrospective effect to the appointment of the Petitioner No.1 and for monetary benefits along with compensation for having not been appointed.

24 None of the parties dispute that the Respondents have a list of eligible candidates for appointment on compassionate basis. There cannot be any dispute that the appointment on compassionate basis will be in the light of the vacancies available. There is also no dispute that the Petitioner No.1 was interviewed in the light of the claim put forth and was enlisted at Sr.No.93 in the wait list. The list of eligible candidates for appointment on compassionate basis has reached 138. The scheme said to be applicable to the Respondents enables the Respondents to appoint the candidates on compassionate basis by following the list in serial order which is based on their date of enlisting.

25 To a pertinent query put to the Petitioners as to whether, the Respondents have jumped the list and by superseding the claim of the Petitioner No.1, have inducted candidates in employment from Sr.No.94 onwards, the answer was that there is no such information that the Petitioner No.1 has been superseded.

26 As such, the second issue before this Court also stands answered in the light of the induction of the Petitioner No.1 at Sr.No.93 in the wait list of eligible candidates for compassionate appointment. The complaint virtually stands partly allowed.

27 I do not find that the Petitioner No.1 could be legally correct in contending that he should be given a compassionate appointment with retrospective effect along with monetary benefits from a deemed date by bypassing the list of eligible candidates prepared by the Respondents. This would amount to abusing the wait list which has legal sanctity.

28 In this backdrop, the learned Advocates for the respective sides, suggested that the complaint itself could be disposed of which is pending before the Industrial Court.

29 In the light of the above, this petition is partly allowed. The impugned order dated 24.04.2015 stands quashed and set aside. The application Exhibit-30 stands allowed.

30 The Industrial Court is directed to permit the Petitioner No.1 to be arrayed as a complainant in place of his deceased father in the said complaint within a period of FOUR WEEKS from today.

31 Needless to state, after the Petitioner No.1 is arrayed as a complainant, the Industrial Court can dispose of the complaint in the light of the admitted fact that the Petitioner No.1 has been enlisted at Sr.No.93 in the wait list prepared by the Respondents for appointment on

compassionate basis.

32 However, it is made clear that after the disposal of the complaint or even prior thereto, if the Petitioner No.1 gathers information that his claim at Sr.No.93 is superseded and the Respondents have proceeded to appointment fresh hands or have proceeded to appoint candidates from Sr.No.94 onwards, he is at liberty to seek an amendment to the pending claim or is at liberty to file a fresh complaint with regard to the said cause of action.

33 Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)