

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4360 OF 2013

Shaikh Anwar Shaikh Lala,
Age 27 years, Occ. Labour,
R/o Warvandi, Tq. Rahuri,
District Ahmednagar.

..Petitioner

Versus

1. Mahatma Phule Krishi Vidyapeeth
At post Vidyapeeth, Taluka Rahuri,
Dist. Ahmednagar,
through its Registrar.

2. Ahmednagar Zila Shetmajoor Union,
Trade Union Centre, Tahsil Kacheri Road,
Ward No.1, Shrirampur, Dist. Ahmednagar
Through its Secretary.

..Respondents

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Advocate for Petitioner : Shri Barde Parag Vijay
Advocate for Respondent 1 : Shri Navandar Manish N.
Respondent 2 : Served.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 06, 2016
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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. While issuing notice on 16.9.2013, this Court had recorded the

submissions of the petitioner in paragraph Nos.1 to 4, which read as under:-

“1. Heard Shri.Parag Barde, learned counsel for the petitioner at length.

2. Shri Barde has vehemently contended that the respondents in its written statement, in Complaint (U.L.P.) No.92/2008 before the Industrial Court in para no.11 has categorically mentioned that the provision of giving compensatory appointment to the legal heirs of the deceased as per the entitlement/qualification, is applicable to the respondent/University. However, at the time of giving said appointment, Government of Maharashtra had laid down certain guidelines/directives. The Government Resolutions dated 22/08/2005 and 18/10/2005 read with Government Resolution dated 23/04/2008 categorically lay down that the candidate seeking compensatory appointment, should apply to the respondent within 1 year from the date of cause of action i.e. the date of death of father of the petitioner herein. Shri.Barde fairly conceded that the application for such compassionate appointment was made beyond the period of limitation as prescribed.

3. Ex facie, I find that there was no employer-employee relationship between the petitioner herein and the Agricultural University. As such, Shri.Barde placed reliance on an unreported order of this Court dated 18/03/2009 in W.P. No.938/2008 in the matter of Ahmednagar Municipal Corporation, Ahmednagar Vs. Madhukar Chandrabhan and others. He draws my attention to para No.4 of the order, which is as under :

Petitioner has also raised objection to the entertainability of the complaint on the ground that there is no relationship of employer and employee between the parties and as such the industrial court has no jurisdiction to entertain

the complaint. It is to be noted that the complainant is seeking relief in respect of employment under the award reached between the employer and the union of the employees. The benefits are conferred on the employee in respect of securing employment for the heirs of such retiring employees. The complainant as such can ask for the benefits accruable to his father on the strength of an award reached between the employer and the employee who was admittedly an employee of the petitioner - Municipal Council. Objection raised in respect of entertainability of the complaint therefore does not call for any consideration. There is no merit in the petition. Petition, therefore, stands rejected summarily.

4. Shri.Barde further contends that the Government Resolutions, as pointed out by the respondent in para no.11 of its written statement before the Industrial Court is akin to the award which finds mention in the judgment/order of this Court (Supra). Based on the same, he contends that there is notional extension of employer and employee relationship between the parties, as a consequence of which, the complaint was maintainable. It also appears that a declaration of U.L.P. was sought for by the petitioner on the ground of violation of the said Government Resolution before the Industrial Court. Per contra, respondents have taken a view which was appreciated by the Industrial Court while dismissing the complaint that it was the petitioner, who had belatedly approached the employer seeking compassionate appointment.”

5. The petitioner's father, who was a Class IV employee with respondent No.1 University, passed away on 26.6.1986, while in service. He was survived by his wife, who is illiterate, the petitioner, who is born on 26.6.1986 and a second younger son.

6. The petitioner moved an application for seeking compassionate appointment on 24.9.2007. The Government Resolution introduced by the State and applicable to the Agricultural Universities dated 22.8.2005 prescribes a period of one year for filing an application for compassionate appointment. Admittedly, the application of the petitioner was delayed by two years. He was more than 19 years old, when his father passed away.

7. With regard to the issue of maintainability of the complaint under the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the Act of 1971") is concerned, Shri Barde, learned Advocate submits that though the petitioner was not an employee of respondent No.1, by the theory of notional extension of relationship in view of his father being in employment and the Government Resolution dated 22.8.2005, the complaint was maintainable.

8. He relies upon the observations of this Court in the matter of Ahmednagar Municipal Corporation Vs. Madhukar Chandrabhan Galphade and others - Writ Petition No.938 of 2008, decided on 18.3.2009, in support of his case. Paragraph No.4 of the said judgment reads as under:-

"4. Petitioner has also rasied objection to the entertainability of the complaint on the ground that there is no relationship of employer and employee between the parties and as such the industrial court has no jurisdiction to entertain the complaint. It is to be noted that the complainant is seeking relief in respect of employment udner the award reached between the employer and

the union of the employees. The benefits are conferred on the employee in respect of securing employment for the heirs of such retiring employees. The complainant as such can ask for the benefits accruable to his father on the strength of an award reached between the employer and the employee who was admittedly an employee of the petitioner - Municipal Council. Objection raised in respect of entertainability of the complaint therefore does not call for any consideration. There is no merit in the petition. Petition therefore stands rejected summarily.”

9. He then places reliance upon the conclusions of this Court, dated 3.3.2015 in the matter of Udgir Municipal Council Vs. The State of Maharashtra and others - Writ Petition No.5507 of 2014, wherein this Court, while considering a similar situation has concluded in paragraph No.9 as follows:-

“9. So far as appointment claimed by respondent No.3 as per recommendations of Lad committee is concerned, in its stricter sense, it cannot be construed as compassionate appointment. As per the Government Resolution dated 19.10.2004, Exh.C, legal heirs of an employee, who was working as Safai Kamgar or Scavengers, are entitled for appointment as per recommendations of Lad Committee. It is also clear from the contents of said Resolution that such appointment can be made after retirement of such employee who was working as Safai Kamgar or Scavenger. Respondent No.3, certainly is an affected person, approached the Industrial Court with a grievance that because of unfair labour practice adopted by the employer, he was deprived of getting appointment on compassionate ground, though is entitled under the above stated Government Resolution based upon recommendations of Lad Committee. In view of the Government Resolution, as referred in the judgment, the

legal heirs of employee is entitled for compassionate appointment. Thus, respondent No.3 steps in the shoes of his father and there is notional extension of relationship between the petitioner and respondent No.3 in this backdrop. Learned counsel for the petitioner has placed his reliance on the above mentioned cases which are altogether on different point and thus cannot be made applicable to the facts and circumstances of the present case. Those cases are on the point of denial of employee employer relationship on usual ground. However, the facts of the present case are peculiar and moreover the Division bench of this Court had also granted liberty to respondent No.3 to approach the Industrial Court for redressal of his grievances. In my considered opinion, the complaint is therefore, maintainable before the Industrial Court and the learned Member, Industrial Court has rightly entertained the same.”

10. Shri Barde, therefore, submits that the complaint was maintainable and no grievance could, therefore, be raised with regard to the same.

11. He further submits that in matters of compassionate appointments and more so when the sole bread earner has died while being in service, rendering the entire family in penury, this Court should consider the period of limitation liberally and to ensure that the ends of justice are met, should condone the delay. He places reliance upon the judgment of the Apex Court in the matter of Shreejith L. Vs. Deputy Director (Education) Kerala [AIR 2012 SC 2665]. He, therefore, submits that the Industrial Court could not have dismissed the complaint by the impugned judgment and the same deserves to be set aside, since the Industrial Court has taken a pedantic view of the matter.

12. Shri Nawandar, learned Advocate for the University has opposed the petition. He relies on the affidavit-in-reply filed on 16.12.2013. He further submits that the Government Resolution, which prescribes a period of one year within which the application should have been filed, cannot be relaxed as it would open floodgates for many others who would start filing the applications, if this Court takes a view that the period set out in the Government Resolution can be relaxed. He further submits that the complaint was not maintainable before the Industrial Court, since there was no employer - employee relationship between the petitioner and the University. He, therefore, prays for the dismissal of this petition.

13. I have considered the submissions of the learned Advocates as have been recorded herein above.

14. This Court has taken a view in the Ahmednagar Municipal Corporation Case (supra) that a complaint seeking compassionate appointment under item 9 of Schedule IV of the Act of 1971 would be maintainable since there was an award in between the employer and a Union of employees. In the instant case, though there was no such award in between the Union, the petitioner and the University, the Government Resolution dated 22.8.2005 was made applicable by the State Government to the Agriculture Universities providing for compassionate appointment to certain categories. Paragraph No.4 of the judgment of this Court in the Ahmednagar Municipal Corporations case (supra) has been reproduced herein above.

15. Paragraph No.9 of the judgment of this Court in the matter of Udgir Municipal Council (supra) has been reproduced herein above. In the said case, there was a Government Resolution dated 19.10.2004, which provided for compassionate appointments to the legal heirs of the employees of the Municipal Council.

16. In the instant case, the Government Resolution dated 22.8.2005 is, therefore, the foundation for the petitioner in filing his complaint before the Industrial Court as notional extension of employer - employee relationship based on the said Government Resolution would enable the petitioner to file such a complaint. I am, therefore, concluding that the complaint was maintainable.

17. The only issue, therefore, that needs to be adjudicated upon is as to whether the delay caused by the petitioner in filing an application for seeking compassionate appointment could be condoned. Contention is that the petitioner, his mother and his brother are living in abject poverty. They have no source of income. The only bread-earner has passed away.

18. The petitioner has placed reliance upon the judgment of the Apex Court in the case of Shreejith (supra). Paragraph No.28 of the said judgment lays down the law that an application need not strictly be in a particular format. The deficiencies and defects in the said application can be pointed out by the authorities and the applicant should remove the

deficiencies within the reasonable time. If he fails to remove the defects, an adverse inference could be drawn against the applicant, in default.

19. The Apex Court in the said judgment has however, declined to condone the delay caused in filing an application for compassionate appointment, despite the applicant being a minor at the time of the death of his father. Paragraph Nos.13, 14 and 15 of the Shreejith's judgment (supra) read as under:-

“13. In Civil Appeal arising out of Special Leave Petition (C) No. 4954 of 2009, father of Respondent No. 1 had been working as the 'Headmaster' of East Valliyai, U.P. School, who died in harness on 27th April, 1995. Respondent No. 1 was a minor at that time who attained majority only on 8th May, 1995 and has got married since then. On 21st July, 2007, the Appellant-petitioner No. 2 was appointed as a 'Peon' in the East Valliyai, U.P. School. It was thereafter on 10th September, 2007 that Respondent No. 1 claimed a compassionate appointment. Assistant Educational Officer directed the Manager to consider the said application by an order dated 24th April, 2008. The Manager, however, rejected the claim on the ground that the prayer for appointment was made belatedly. The District Educational Officer upheld the rejection in terms of his order dated 24th June, 2008. The matter was then brought up before the High Court of Kerala at Ernakulam in W.P.(C) No. 16815/2008 in which the writ Petitioner, Respondent No. 1 before us, challenged the rejection of her claim for appointment on compassionate basis. By an order dated 20th October, 2008, a single Bench of the High Court allowed the said petition and directed the Manager of the institution to appoint the writ Petitioner against the vacancy of

'Peon' that had arisen on 30th June, 2008. Aggrieved by the said order, the Manager of the school filed Writ Appeal No. 2211 of 2008 before a Division Bench of the High Court which appeal was dismissed by the High Court in terms of its order dated 13th January, 2009 impugned in this appeal.

14. *Appearing for the Appellant it was contended by Mr. Rajan that the application filed by Respondent No. 1 was belated inasmuch as the same was filed 12 years after her attaining majority. He submitted that during the intervening period Respondent No. 1 had got married which clearly showed that the family was not in penury to call for any sympathy towards it. The High Court had according to Mr. Rajan, fallen in error in holding that delay in the filing of the application was only technical in nature as the vacancy against which the prayer for compassionate appointment had been made had occurred after about 13 years of the demise of the father of Respondent No. 1.*

15. *There is considerable merit in the contention urged by Mr. Rajan. It is not in dispute that Respondent No. 1 had attained majority on the 8th of May, 1995 whereas the application for compassionate appointment was made on 10th September, 2007. This application was, on the face of it, beyond the period stipulated in the scheme for making such a claim. The High Court appears to have confused an application required to be filed within the period stipulated for the purpose with the availability of a vacancy against which such an application could be considered by the Manager. These were two distinctly different matters. What was important was the making of an application for appointment on compassionate basis within the period stipulated for the purpose. Whether or not a vacancy is available had nothing to do with the making of the application itself. An application could and indeed ought to have been made by Respondent No. 1 within the time stipulated,*

regardless whether there was a vacancy already available or likely to become available in the near or distant future. Respondent No. 1 having failed to do that, could not claim a compassionate appointment especially when there was nothing on record to suggest that the family was in penury notwithstanding the lapse of a considerable period since the demise of the bread-winner; during which period Respondent No. 1 had got married and settled down in life and supports a family. The High Court was in that view clearly in error in issuing a mandamus to the Manager to appoint the Respondent on compassionate basis which order calls for interference and is hereby reversed.”

20. When called upon to state the marital status of the petitioner, Shri Barde, on instructions from the petitioner, present in the Court submitted that he has got married about a year ago. I also find that there was no evidence before the Industrial Court to indicate any discrimination to the extent of the University having entertained any applicant's application beyond a period of one year from the date of death of the parent or from the date such applicant may have attained adulthood (18 years of age), after the passing away of the parent. In this backdrop, I do not find it just and proper to condone the delay and enlarge the limitation prescribed by the Government Resolution dated 22.8.2005.

21. In the light of the above, I do not find any merit in this petition. The impugned judgment is neither perverse nor erroneous. The petition is, therefore, dismissed

22. However, it is open to the petitioner to make an application, either

directly or under the Right to Information Act to the respondent No.1 University for seeking information as to whether any applicant seeking compassionate appointment has been enlisted despite the application having been made beyond limitation of one year from the date of death of the parent or from the date of attaining adult-hood, post demise of the bread earner. In the event, such an application is made, the respondent University shall truthfully supply the necessary details as may be sought. In the event the petitioner stumbles across any such information that the University had relaxed the limitation period, he would be at liberty to raise his claim based on such information.

23. Rule is, therefore, discharged.

(RAVINDRA V. GHUGE, J.)

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