

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8460 OF 2016

1. The State of Maharashtra
Through its Secretary,
Irrigation Department,
Mantralaya, Mumbai.

2. The Superintending Engineer
and Administrator,
Command Area and
Development Authority,
Trimbak Road, Nasik.

3. Executive Engineer,
Nasik Irrigation Division,
Trimbak Road, Nasik.

4. Assistant Engineer,
Godawari Right Side Canal,
Sub Division, Rahata,
District Ahmednagar.

..Petitioners

Versus

Sanjay Jagannath Viste,
R/o Survey No.105,
Hanuman Nagar,
At & Post Kopargaon,
District Ahmednagar.

..Respondent

...
AGP for Petitioners : Shri Munde S.W.
Advocate for Respondent : Shri Barde Parag Vijay

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 10, 2016
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.

2. Rule.

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

4. The petitioner is aggrieved by the judgment and order dated 4.7.2015, by which, Complaint (ULP) No.3 of 2011 filed by the respondent has been allowed and the petitioners have been directed to re-include the name of the respondent in the Waiting List of the candidates to be appointed on compassionate basis.

5. I have considered the strenuous submissions of the learned AGP on behalf of the petitioners and Shri Barde, learned Advocate on behalf of the respondent.

6. The undisputed factors in this case are as under:-

(a) The father of the respondent, namely, Jagannath Viste was the employee of the petitioners as a Peon and was in permanent service.

(b) He died, while in service, on 24.1.2003.

(c) The respondent, who is born on 3.4.1969, filed an application dated 17.7.2003, as per the concerned

Government Resolution applicable seeking compassionate appointment in place of his deceased father.

(d) By the Government Resolutions, dated 22.8.2005 and 23.4.2008, the conditions applicable for compassionate appointments were improvised by the State.

(e) The respondent completed 40 years of age on 2.4.2009.

(f) The petitioners relied upon the Government Resolution dated 23.4.2008 by which, the age limit for appointing a candidate on compassionate basis was 40 years and deleted the name of the respondent from the Waiting List solely on the ground that he had completed 40 years of age.

(g) The Government introduced another Resolution dated 6.12.2010, by which, the age for appointment on compassionate grounds was increased to 45 years.

(h) Based on the same, the respondent preferred Complaint (ULP) No.3 of 2011 before the Industrial Court at Ahmednagar praying for a direction to the petitioners to re-include his name.

(i) The Complaint was dismissed by the judgment dated 20.11.2013.

(j) The respondent approached this Court in Writ Petition No. 9624 of 2014 and by its judgment dated 3.11.2014, this Court (Coram : N.W.Sambre, J.), allowed the Writ Petition partly and directed the Industrial Court to decide the

Complaint afresh.

(k) By the impugned judgment dated 4.7.2015, challenged by the petitioners on 4.5.2016 in this petition, the Industrial Court had allowed the Complaint.

7. The petitioners have put-forth two grounds for challenging the judgment of the Industrial Court. Firstly, that the petitioners have not committed any ULP by deleting the name of the respondent and secondly, there is no employer - employee relationship between the petitioners and the respondent.

8. The Industrial Court concluded that there was notional extension of relationship between the petitioners and the respondent by relying upon the following three judgments:-

- (i) Manish Mishra V/s State of U.P. [1998 (79) FLR 846],
- (ii) Bablu Singh V/s Coal India Ltd. [2009 I CLR 568], and
- (iii) Writ Petition No.38 of 2008 - Ahmednagar Municipal Corporation V/s M.C.Galphade and others.

9. Considering the above, I do not find that the challenge posed by the petitioner to this extent deserves to be entertained.

10. From the facts of this case, I find that the petitioners have acted in a manner unbecoming of a model employer. There is no

dispute that death of a parent would entitle an eligible ward to seek compassionate appointment in his place. It is settled law that the purpose of compassionate appointment is to render succour and immediate relief to a family, for reducing its hardships and to ensure that the unfortunate family would survive through the earnings on account of compassionate appointments. Such policies are introduced by the State Government considering the socio economic structure. Though it is concluded that appointment on compassionate basis is not a right, yet the conduct of the State in depriving eligible candidates by keeping them on the wait list for years would in fact, cause disservice to the family of the deceased employee.

11. The Allahabad High Court in Manish Mishra case (supra) has concluded that if the policy mandates compassionate appointment to an eligible candidate, even if the post is not available, a supernumerary post can be created. The Calcutta High Court in Bablu Singh case (supra) has criticized the authorities for having dodged the application of an eligible candidate for compassionate appointment though he had approached the authorities within time. It concluded that the Court cannot be a passive onlooker in the face of the violation of the rights of an individual and natural justice.

12. This Court in the matter of Ahmednagar Municipal Corporation

(supra) has concluded in its order dated 18.3.2009, that an eligible candidate can approach the Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, for seeking implementation of any settlement, agreement or award if it creates any right in him owing to the passing away of a parent who was in service.

13. A decision by the appropriate authorities with regard to the compassionate appointments needs to be taken with promptitude so as to avoid frustrating the bereaved family and to avoid truncating the rights of an eligible candidate. In the instant case, the respondent had filed an application within seven weeks from the date of the demise of his father. Needless to state, the death of his father having occurred while in employment, naturally left a vacancy. It is not the case of the petitioners that the post has been abolished, inasmuch as, they could not have taken this stand when the various Government Resolutions apply the scheme of compassionate appointments to Municipal Councils / Corporations.

14. It is disturbing to note that the petitioners sat over the list for practically six years and on the date on which the respondent completed 40 years, i.e. 2.4.2009, the petitioners acted with electric speed and instantly removed the name of the respondent on the very same date. Such a conduct of the petitioners cannot be appreciated

and deserves to be deprecated.

15. In the above backdrop, as on the one hand, I do not find that the impugned judgment of the Industrial Court could be termed as being perverse or erroneous, on the other hand, I find it to be a fit case for imposing costs on the responsible authorities of the petitioners.

16. As such, petitioner No.2 - Superintending Engineer and Administrator of the CADA, Trimbak Road, Nasik and Petitioner No.3 Executive Engineer, Nasik Irrigation Division, Trimbak Road, Nasik, who were occupying the positions at the relevant time in between 2003 to 2.4.2009, need to pay the costs. Accordingly, they shall deposit costs of Rs.10,000/- each, in this Court, from their own salary account and not from the State exchequer, within a period of four weeks from today. After the amount is deposited, the respondent shall withdraw the said amount upon being duly identified by the learned Advocate.

17. The learned AGP shall place the copy of this judgment before the Principal Secretary to the Government of Maharashtra, Irrigation Department, Mantralaya, Mumbai who shall ensure that the petitioners 2 and 3, who are responsible for keeping the list pending and for deleting the name of the respondent, notwithstanding

whether they are presently occupying the same position or not, shall comply with the direction of payment of costs.

18. This petition is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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