

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10617 OF 2014

Prakash Manga Paradhi ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

WITH
WRIT PETITION NO. 10339 OF 2014

Shri Raju Devram Pokale ... Petitioner
Vs.
The State of Maharashtra & Ors. ... Respondents

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Mr. N. V. Walawalkar, Senior Advocate I/b. Mr. Suresh M. Sabrad
for the Petitioner in both matters.

Mr. B. V. Samant, AGP for Respondents-State in both matters.

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**CORAM : S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

DATE : OCTOBER 30, 2017.

P.C. :

1. We have heard both sides.
2. Ordinarily, the Writ Petitions could not have been entertained directly by this Court in the light of Section 15 of the Administrative Tribunals Act, 1985 for what the petitioners are seeking is appointment to a post under the State of Maharashtra and particularly, the office of the Superintendent Engineer/Executive Engineer, Bhatsa Canal Division No.1,

Shahapur, Thane. However, on account of a specific reference by the Collector, District Nasik-Respondent No.4 to the Writ Petitions, to the State and in the light of order dated 12th August, 2016 by a Division Bench of this Court, we proceed to entertain these Petitions as exceptional cases.

3. We have heard Mr. Walawalkar, learned Senior Advocate for the petitioners in both Petitions and Mr. Samant appearing for the State and other respondents.

4. The petitioners in these Petitions claim that they were eligible for being appointed on compassionate ground. The petitioners claim that there is a policy or scheme for compassionate appointment. In the case of petitioners, their fathers/predecessors in title were working as labourers. They expired while in service. They have expired long time back and in the case of the petitioner Prakash Manga Paradhi, his father expired on 20th November, 2004. An application was filed on 27th June, 2005 mentioning the demise of the father and a request to appoint or employ the petitioner-son in his place. The petitioner's application, copy of which is at annexure "B", was forwarded to the competent authority. That application was forwarded in turn to the Collector of the District. That was forwarded on 21st July, 2005. Thereafter, another letter was addressed by the Superintendent Engineer to the petitioner but in 2008, seeking certain clarifications and further documents. The petitioner duly

complied with the same. Then, the local Member of the Legislative Assembly intervened, but it was not before 2013. The petitioner then took up the matter with the Collector of the District and possibly that authority, namely, the Collector of District Nashik, found himself incompetent to accept the application of the petitioner. His view was that there is an inordinate delay of eight years on the part of the 3rd respondent to this Petition in forwarding the petitioner's claim for being included in a list known as wait-list of the employees seeking compassionate employment. He was, therefore, of the view that unless the State directs, he cannot include the name of the petitioner in that list.

5. On 12th August, 2016, after hearing both sides, this Court passed the following order:

“Pursuant to order passed by this Court dated 15.4.2015, an affidavit dated 16.2.2016 (Paras 14 and 15) is filed by Tahsildar on behalf of Collector and as statement is made that till this date, Under Secretary, General Administration Department, Mantralaya, Mumbai has not decided and/or given any guidelines or guidance for enumerating the names of the Petitioners in the compassionate list as per Government Resolution dated 22/-8.2005, we are inclined to direct the Under Secretary to issue guidance based upon letter dated 27.04.2015 as early as possible and preferably within four weeks.

Stand over to 13.09.2016.

Parties to act on the basis of an authenticated copy of this Order.”

6. After that order, now, the State of Maharashtra has clarified in writing on 7th September, 2016 that the names of the petitioners can be included by the Collector. The Collector has been guided accordingly and in terms of paragraph 2 of this communication, the petitioners' names ought to have been included in the wait list.

7. They are not included, but we do not find any justifiable reason for such non-inclusion. Having perused the affidavit of the State on record and further order of this Court, we are of the clear opinion that in the facts and circumstances peculiar to these cases and without this order being treated as a precedent for other claimants/applicants, the names of the petitioners can be directed to be included in the wait-list and as and when their turn comes, their cases can be considered in accordance with the scheme framed in that regard. Thus, in accordance with the existing scheme, the claims for appointment on compassionate basis by the petitioners to be considered and as per their turn on the wait-list. However, their claims should not be turned down or refused only on the ground of delay of eight years in forwarding their names, for that delay is entirely attributable to the Superintendent Engineer-respondent no.3. The petitioners cannot be faulted for their names not being forwarded to the Collector of the District by the competent authority. However, the claim of the petitioners be considered strictly in accordance with the scheme, the law and on merits.

8. The petitioners' placement in the wait-list shall be on the basis that complete applications were forwarded by them as far back as on 27th June, 2005 and the delay thereafter has not occurred because of any fault or negligence of the petitioners. The Petitions are disposed of accordingly.

9. We direct that the petitioners names be included in the said list as expeditiously as possible and in terms of our directions and in any event within a period of eight weeks from the date of receipt of this order.

(SMT. BHARATI H. DANGRE, J.)

(S. C. DHARMADHIKARI, J.)