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

WRIT PETITION NO. 1479 OF 2018

Shalini Wd/o Vijay Kulkarni,
Age – 52 years, Occu – Service Provider,
MCED, Aurangabad
R/o. Plot No. 13, Saptrushivatika,
Swapna Nagari, Garkheda, Aurangabad .. PETITIONER

VERSUS

1. Managing Director,
MSSIDC, Chairman – Executive Committee
of MCED, Krupanidhi Building,
1st Floor, Ballard Estate, Mumbai 400 001
2. The Executive Director,
And Member Secretary,
Maharashtra Centre for Entrepreneurship
Development,
A – 38, M.I.D.C. Railway Station Area,
Aurangabad – 431 005 .. RESPONDENTS

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Mr A.P. Ghule-Patil, Advocate for petitioner;
Mr S.S. Dande, A.G.P. for respondent no. 1;
Mr. A.S. Patil, Advocate h/f. Mr. S.S. Chapalgaonkar, Advocate for
respondent no. 2

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 7th October, 2021

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. By this petition, the petitioner has put-forth prayer clause (B) which reads thus:-

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“(B) By invoking jurisdiction under Article 226 of the Constitution of India, kindly direct respondents to regularize the services of petitioner as a permanent employee on Compassionate Ground.”

3. The relevant factors to be considered in this case, are as under:-
 - a) The husband of the petitioner, namely, Vijay Rajaram Kulkarni was working as Personal Assistant to the Director in respondent no.2 office.
 - b) On 10.11.2009, Vijay Kulkarni died.
 - c) On 27.11.2009, the petitioner widow applied for compassionate appointment.
 - d) On 4.6.2010, respondent no. 2 informed the petitioner that the executive committee has decided in it's meeting dated 23.4.2010 to induct the petitioner on contract basis and not on compassionate ground.
 - e) The petitioner started working on contract basis with respondent no. 2 as a service provider.
 - f) Respondent no. 2 does not have any vacant post to accommodate the petitioner as there has been no permission for recruitment since 2004.

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- g) After 11 years of working on contract basis, this petition has been filed.

4. There is no dispute that as on the date of the death of the petitioner's husband and the induction of the petitioner on contractual basis, there was no policy of compassionate appointment with respondent no. 2. By a resolution no. 57.6 passed in the 57th meeting of the governing council of Maharashtra Center for Entrepreneurship Development (for short "MCED") on 16.3.2013, respondent no. 2 decided to adopt the following rules with effect from 1.4.2013:-

- "1. Bombay Financial Rules, 1959.
2. Maharashtra Contingent Expenditure Rules, 1965.
3. Maharashtra Public Works Manual.
4. Maharashtra Budget Manual.
5. Delegation of Powers regarding miscellaneous expenditure.
6. Manual of Financial Powers, 1978.
7. Manual of Departmental Enquiry, 1978.
8. Purchase procedure followed by Government
9. MCS (General Conditions of Services) Rules, 1981.
10. MCS (Pay) Rules, 1981.
11. MCS (Leave) Rules, 1981.
12. MCS (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981.
13. MCS (Discipline and Appeal) Rules, 1979.
14. MCS (Conduct) Rules, 1979.
15. MCS (Literacy of Computer Handling and Usages) Rules, 1999."

It is, therefore, obvious that there was no compassionate appointment scheme available with respondent no.2 as in November 2009.

5. An affidavit-in-reply has been filed by the Head of the Department, MCED dated 4.9.2018 in which it is stated that the relief being sought by

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the petitioner in this petition can be considered under the labour laws by the competent Court. MCED is registered under the Societies Act, 1860 and is a non-profit making organization. Various entrepreneurship development training programs are effected by funds supplied by the Government of Maharashtra. Due to paucity of funds, the MCED is unable to manage it's institutional affairs. It is further submitted that the husband of the petitioner was a Stenographer Grade-C and since there was no scheme for compassionate appointment and considering that MCED is a non-profit making organization, that a resolution was passed on sympathetic grounds to engage the petitioner on contract basis.

6. The petitioner submits that after this petition was filed on 16.1.2018, the petitioner's contract as a service provider has not been continued.

7. In our view, it is well settled that compassionate appointment is not an indefeasible right. Such appointments flow only through the schemes. As on the date of the demise of the petitioner's husband, there was no scheme which could enable appointment on compassionate basis. So also, compassionate appointment can be made on a post which is sanctioned and available. The petitioner's husband was working as a Stenographer Grade-C and the petitioner does not have the qualifications to be a Stenographer. She was accommodated as a service provider. The nature of duties performed and the job profile of the petitioner has not been pleaded in the memo of the petition.

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8. In view of the above, we do not find that the extra-ordinary powers of this Court under Article 226 of the Constitution could be exercised for granting compassionate appointment when neither a post is available and nor is any such scheme applicable when the petitioner became eligible. So also, the petitioner presently is 55 years of age and her husband has passed away 12 years ago.

9. As such, this petition being devoid of merit is, therefore, dismissed.

Rule is discharged. No order as to costs.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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