

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

904 WRIT PETITION NO.2225 OF 2023

KISHOR RAMDAS SALVE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND
ANOTHER

Mr.A.D.Soman, Advocate for the Petitioners.
Mr.P.S.Patil, AGP for Respondent No.1.
Mr.S.S.Tope, Advocate for Respondent No.2.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : FEBRUARY 28, 2023

PER COURT :

1. The Petitioner has put forth prayer clause B, C and D as under :-

"B. The order passed by present respondent No.2 on 20.10.2022 may kindly be quashed and set aside.

C. By issuing appropriate order or direction the present respondent No.2 may kindly be directed to consider the case of present petitioners for appointment on compassionate ground on Class IV post and appoint them on the same post.

D. Or in alternative or without prejudice to the above prayer until final disposal of this writ petition, the present respondent No.2 may kindly be directed not to absorb any person in the establishment of

Corporation in any CLASS IV category post on compassionate ground."

2. We have considered the strenuous submissions of the learned Advocates for the respective sides. We have perused the impugned order dated 20.10.2022, by which the Petitioners have been informed that compassionate appointment is available only in the case of the death of the bread earner while in service. The parents of these Petitioners have superannuated from employment and thereafter, these Petitioners have been pursuing the Municipal Corporation for compassionate appointment in place of their parents.

3. Petitioner No.1, Kishor is 48 years of age. He is married and has children. Petitioner No.2, Sandeep is 37 years of age. He is married and has children. Petitioner No.3, Radhakishan is 36 years of age. He is also married and has children. Petitioner No.4, Anil is 39 years of age. He is also married and has children.

4. It does not call for any debate that several decades ago, vide GR dated 20.06.1972, the Government resolved to accept the recommendations of the Lad Page Committee, so as to grant employment to the legal heirs of those persons who belong to Walmiki

and Mehatar Backward class communities, provided the bread earners who are working as Safai Kamgar in the sewage pipelines (Septic tank) and such cleaning operations. These recommendations were commonly known as “वशिला पध्दत” or “वारसा हक्क”.

5. The Petitioners were before this Court, earlier, in WP No.6534/2011, 5800/2011 and 8771/2011. Their prayer was that the Municipal Corporation be directed to appoint eligible persons on compassionate grounds based on the seniority. This Court accepted the prayer that all appointments on compassionate ground shall be made only by following the seniority.

6. It is revealed that the parents of these 4 Petitioners were working as a Lineman / Water Supply Department / Coolie. None of them were working as *Safai Kamgar*, much less on the sewage pipelines or such cleaning operations. None of the Petitioners belong to the Walmiki or Mehatar Community. Their parents have superannuated from employment and thereafter these Petitioners have put forth their claims. It is conceded that it is more than 12 years ago that the parents of these Petitioners have superannuated.

7. The issue as regards granting employment to a legal heir after the bread earner has superannuated from service, has been considered by the Hon'ble Supreme Court in a recent judgment delivered in **Ahmednagar Mahanagarpalika Vs. Ahmednagar Mahanagarpalika Kamgar Union [(2022) 10 SCC 172]**. It has been specifically held in paragraph Nos. 14, 15, 16 and 17, as under:-

"14. In view of the above also, thereafter it was not open for the Industrial Court and/or even the High Court to direct the Mahanagar Palika/Municipal Corporation to provide appointment to the heirs of the employees on their retirement/superannuation, relying upon the judgment and award passed by the Industrial Court in Reference IT No. 51 of 1979.

15. After the conversion of the Municipal Council to Municipal Corporation/Mahanagar Palika, the employees of the Mahanagar Palika/Municipal Corporation shall be governed by the scheme framed by the State Government and at par with the government employees. As per the recent decision of this Court in the case of Bheemesh alias Bheemappa (supra), the appointment on compassionate ground shall be as per the modified scheme. Therefore, the employees of the Mahanagar Palika/Municipal Corporation shall be governed by the scheme of the State Government at par with the government employees, which does not provide for appointment on compassionate grounds to the heirs of the employees on their retirement and/or superannuation.

16. Even otherwise, such an appointment to the heirs of the employees on their retirement and/or superannuation shall be contrary to the object and purpose of appointment on compassionate grounds and is hit by [Article 14](#) of the Constitution of India. As observed and held by this Court in a catena of decisions, compassionate appointment shall always be treated as an exception to the normal method of recruitment. The appointment on compassionate grounds is provided upon the death of an employee in harness without any kind of security whatsoever. The appointment on compassionate grounds is not automatic and shall be subject to the strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. No one can claim to have a vested right for appointment on compassionate grounds. Therefore, appointment on compassionate grounds cannot be extended to the heirs of the employees on their superannuation and/or retirement. If such an appointment is permitted, in that case, outsiders shall never get an appointment and only the heirs of the employees on their superannuation and/or retirement shall get an appointment and those who are the outsiders shall never get an opportunity to get an appointment though they may be more meritorious and/or well educated and/or more qualified. Therefore, the submission on behalf of the respondent that the appointment is not on compassionate grounds but the same be called as varas hakka cannot be accepted. Even if the same be called as varas hakka the same is not supported by any scheme and even the same also can be said to be violative of [Article 14](#) as well as [Article 15](#) of the Constitution of India.

17. In view of the above and for the reasons stated above, both the Judgment and award passed by the Industrial Court as well as the High Court in directing the Mahanagar Palika/ Municipal Corporation to give appointment to the heirs of the employees on their superannuation and/or retirement is unsustainable and the same deserves to be quashed and set aside."

8. It is, therefore, obvious that the Hon'ble Supreme Court has taken a view that it is not even open for the Industrial Court or the High Court to direct the Municipal Corporation to provide appointment to the heirs of the employees on their retirement / superannuation. It is further recorded that the appointment on compassionate ground is not automatic and shall be subject to strict scrutiny of various parameters including the financial position of the deceased, the economical dependency of the family upon the deceased member. Appointment by "वारसा हक्क" cannot be extended to the heirs of the employees who have superannuated or retired from service. If this practice is continued, those who are outsiders shall never get an opportunity of employment. The Hon'ble Supreme Court, therefore, declined to accept the "वारसा हक्क" as a ground for granting employment to the heirs whose parents have retired from service.

9. The learned Advocate for the Petitioners has strongly canvassed that the Corporation has granted employment on the basis of “वारसा हक्क” to many candidates whose parents have retired from service, who are not belonging to the Walmiki and Mehatar community and who were not working as Safai Kamgars. We can not consider this contention, which is without substantiation, to grant relief to the Petitioners. Two wrongs will not make one right. If the Corporation has faltered, it is for the Corporation to rectify it's actions. Because they have done something wrong or unethical, cannot be a reason for granting benefits to these Petitioners. Moreover, all of them are well settled in life, are married, have children and are living a peaceful life in the last more than 12 years after their parents retired from service.

10. In view of the above, this petition, being devoid of merit, stands dismissed.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)