

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2865 OF 2023

MOHD AMAN KHAN MOHD ANWAR KHAN
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
PRINCIPAL SECRETARY AND ANOTHER

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Advocate for the Petitioner : Shri Nitin T. Tribhuwan
AGP for Respondent 1/State : Shri V.M. Kagne
Advocate for Respondent 2 : Ms.Anjali Dube (Bajpai)

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CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.

DATE :- 28th March, 2023

Per Court :-

1. This petition has been filed by the Petitioner for seeking compassionate appointment with the Municipal Corporation as his father passed away on 17.05.2020. On 14.03.2023, we had passed the following order:-

"1. The claim of the Petitioner's father of belonging to Tadvī S.T. was invalidated. He was put on a supernumerary post. His father had approached this Court in writ Petition No.1159 of 2003 for challenging the invalidation of his tribe claim. The invalidation was sustained vide judgment dated 16.12.2003, passed by this court (Coram: A. P. Shah and A. B. Naik, JJ.). It was concluded that the claim of the father of the

Petitioner, was rightly invalidated. However, his termination was set aside and he was granted reinstatement with continuity of service without back wages.

2. *It is conceded that the father of the Petitioner was selected and appointed on the post which was reserved for S.T. category. As he was placed on supernumerary post and passed away, his widow, who is mother of the present Petitioner, approached this Court in writ Petition No. 7385 of 2021. This Court quashed the order of placing the deceased on supernumerary post and concluded that the legal heirs of the deceased would be entitled for all consequential benefits. In this backdrop, the Petitioner now claims compassionate appointment in place of his father.*
3. *The Hon'ble Supreme Court has recently held in Chairman and Managing Director, Food Corporation of India and others vs. Jagdish Balaram Bahira and others, (2017) 8 SCC 670, that the invalidation would invite all consequences and if the person has gained employment on the basis of his claim of belonging to a reserved category, the invalidation would result in taking away all the benefits of such candidate.*
4. *The Full Bench of this Court has now, by common judgment dated 22.07.2022, concluded in Om Bhagwanrao Anjanwad vs. The State of Maharashtra and another, Writ Petition No. 6750 of 2022 and Writ Petition No. 6771 of 2022, that an entry in the employment on the basis of reservation mandates tendering of a validity certificate. If the employee has passed away without tendering a validity certificate, the eligible heir for compassionate appointment, is duty bound to submit the validity. If there is invalidation,*

the very entry of the candidate in the employment is rendered illegal. In these circumstances, there would be no question of granting compassionate appointment to a candidate whose father has entered service on the basis of reservation and the claim of belonging to a particular category has been invalidated.

5. *The learned advocate for the Petitioner seeks time to take instructions as to whether the Petitioner has a validity certificate and also desires to rely upon the case of Chairman and Managing Director, Food Corporation of India and others (supra).*
6. *List this Petition on 28.03.2023, in the 'passing orders' category."*

2. Today, the learned Advocate for the Petitioner submits, on instructions, that the Petitioner does not desire to prosecute this petition and the same may be permitted to be withdrawn. He, however, submits that his mother has tendered a representation to the Municipal Corporation for certain retiral benefits that are due and payable to her. The said representation may be decided by the Municipal Corporation.

3. The learned Advocate for the Municipal Corporation submits that the said representation would be decided in accordance with law and a decision would be arrived at within thirty days.

4. In view of the above and taking into account the

prayers put forth and the order of this Court dated 14.03.2023,
this Writ Petition is dismissed as withdrawn.

kps

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)