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

11 WRIT PETITION NO.2515 OF 2023

**KUM. POONAM HIRAMAN JADHAV AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE
PRINCIPAL SECRETARY AND OTHERS**

....

Mr S. S. Jadhavar, Advocate for Petitioners;
Mr S. P. Tiwari, A.G.P. for Respondent No.1

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

DATE : 6th March, 2023

PER COURT:

1. The Petitioner No.1, is said to be the daughter of Petitioner No.2, who claims to be a 'Safai Kamgar' with Respondent No.2. Petitioner No.1 has acquired her Bachelor of Engineering Degree and by preferring this petition, she desires employment as a 'Safai Kamgar' in the Ahmednagar Municipal Corporation, where such 'Safai Kamgar' work on the drainage pipelines and the sewage pipelines. It is conceded that, the Petitioners do not belong to the 'Valmiki', 'Mehtar' or 'Bhangi' community. The Petitioners belong to the Scheduled Caste Category. They claim benefit of the Lad-Page Committee's

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recommendations, which is commonly known as 'Vashila Padhat' ('वशिला पध्दत') or 'Varsa Hakka'.

2. We have perused the order of appointment of the father of Petitioner No.1. He was appointed as a 'Bigari' after the learned Industrial Court, Ahmednagar, delivered an order on 23/11/1994 in his Complaint (ULP) No.122/1990. There is no appointment or transfer order of Petitioner Nos.2, indicating that he was shifted from the post of daily wager/Bigari to the post of 'Safai Kamgar'. It is conceded that Petitioner No.2 has superannuated from service and pursuant to his retirement, Petitioner No.1 seeks appointment, by Varsa Hakka.

3. The Hon'ble Supreme Court has recently delivered a judgment in **Ahmednagar Mahanagar Palika Vs. Ahmednagar Mahanagar Palika Kamgar Union, (2022) 10 SCC 172**. The Judgment of the Division Bench of the Bombay High Court has been set aside by the Hon'ble Supreme Court, concluding that the Lad–Page Committee's recommendations should not be made applicable to the candidates, who have superannuated from service. It has been held in paragraph Nos.6 to 8 as under :-

6. *Even otherwise, it is required to be noted that in Reference (IT) No. 2/1993, which was at the instance of*

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Mahanagar Palika on the notice of change in respect of demand of employment to the heirs of the employee as per Reference (IT) No. 51 of 1979, the Industrial Court vide judgment and award dated 21.02.2005 directed the appointment on compassionate grounds to the heirs of the deceased employees only. It was specifically observed by the Industrial Court that at the time of passing earlier award in Reference IT No. 51 of 1979, i.e., in the year 1979 the demand to provide the employment to the legal heirs of the employees on their retirement/superannuation was reasonable, however, in the present situation the said demand does not appear to be good and reasonable. The Industrial Court further observed that, needless to say, now-a-days the unemployment problem is a very major problem and in spite of high qualifications the qualified persons are not getting jobs and they remain unemployed. While modifying the demand and directing to provide appointment on compassionate grounds to the legal heirs of the employees (on the death of the concerned employee), in judgment and award dated 21.02.2005 in Reference IT No. 2/1993, it was observed by the Industrial Court as under:

"It seems from the oral submissions of the parties that, at the time of passing earlier award in Ref. (IT) No. 51/1979 i.e., in the year 1979 the demand for providing the employment to the legal heir of employee was reasonable however in present situation the said demand does not appears to be good and reasonable. Needless to say, that nowadays the unemployment problems is very major. In spite of high qualifications, the qualified persons are not getting job and they are unemployed. In view of this demand there is no scope for qualified unemployed person to get the job in the establishment of the party no. 1, as the legal heirs of the employees will get the job in place of the employee working in the establishment of the party no. 1. Mr. Patil learned advocate for the

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party no. 1 rightly submitted that on the basis of this demand the legal heirs are claiming employment on attaining the majority and if the legal heir is minor at the time of superannuation and that too after 10 years also under such circumstances in my opinion also the demand of providing employment to the legal heirs does not appears to be proper.

It has sufficiently come on record through the oral evidence of the parties that as per this demand the employment has been claimed as of right and there is no scope for selection of proper candidate, even the guidelines of the government regarding Reservation could not be followed. It is pertinent to note here that, as per the government policy certain post in the establishment are reserved for back ward classes and on those post- employment is to be given to the candidate from reserve category however as there is no scope for employment to others, therefore, it is very difficult for the candidates from reserve category to get employment in the establishment of the party no. 1.

It has also come on record that, as per this demand the employment is being claimed for distant relative on the basis of adoption. True it is that the adoption can be made as per law and after adoption the adopted child because legal heir of that person however it seems from the various copies of documents placed before the Court that employment has been claimed for nephew on the basis of affidavit saying that the nephew is taking care of that employee. Similarly, in another matter the employment is sought for adopted son by application dated 02.05.1997 and deed of adoption has been executed on 30.04.1997.

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From these documents it can be said positively that the demand or providing employment to the legal heirs of the employees has been misused. Furthermore, nothing has been placed on record on behalf of the party no. 2 union that such practice is being continued in any other establishment. The witness of the party no. 2 union specifically asked about the however he could not brought any documentary evidence.

In my opinion also even though this demand was reasonable in 1979 however the same is certainly not reasonable and justified during present days and in the light of misuse of the demand it can be safely said that the party no. 1 is justified in seeking change in the demand in respect of providing the employment to the legal heirs of the employees on superannuation, invalidity or resignation, be now I am inclined to modify the demand and directing the party no. 1 to provide (1) employment to the legal heirs of the employees of Class-IV category working in health department only (2) to provide the employment to the legal heirs of all categories i.e. Class-I category to Class-IV category on compassionate ground as per government Resolutions and circulars at par with governments employees."

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.

7. 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.

8. 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

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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.”

4. Despite the Award dated 30/03/1981, delivered by the learned Industrial Tribunal in Reference No.51/1979 and the subsequent Award dated 21/02/2005, delivered by the learned Industrial Tribunal in IT No.2/1993, the Hon'ble Supreme Court has concluded that, the Lad-Page Committee's recommendations and the 'Varsa Hakka' should not be made applicable to the legal heirs of the employees, who have retired from service. It was further observed that, if this is continued, no outsiders from the public at large would be able to secure employment, and it will only the legal heirs of such employees, who get backdoor entries in employment. Moreover, in the present case, we find that Petitioner No.1 is a Bachelor of Engineering. We have a serious doubt, as to whether she would work as a 'Safai Kamgar' on the drainage and Sewage pipelines.

5. In view of the above, since the reasons assigned by the Corporation for refusing to entertain a request for appointment on the basis of 'Varsa Hakka' to the daughter of a retired employee, are in tune with the law laid down by the Hon'ble Supreme Court, vide Ahmednagar Mahanagar Palika Judgment (supra), we do not find that the impugned order could be termed as perverse or erroneous. This petition is, therefore, dismissed.

(SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)

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