

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO. 5046 OF 2023 IN
REVIEW APPLICATION (ST.) NO. 10609 OF 2023 IN
WRIT PETITION NO. 12996 OF 2019**

PATHAN RIYAZ KHAN SHAUKAT KHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for applicant : Mr. Sayyed Tauseef Yaseen
Addl. GP for the respondent – State : Mrs. M.A. Deshpande
...

**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 13 APRIL 2023

ORDER (MANGESH S. PATIL, J.) :

Heard the learned advocate Mr. Tausif.

2. The petitioner is seeking condonation of delay in filing the review application whereby he is seeking review of our order dated 22-09-2022 passed in writ petition no. 12996 of 2019 dismissing it on merits.

3. Considering the rival submissions, we called upon Mr. Tausif to address us on the maintainability of the review application.

4. Mr. Tausif would submit that the petitioners' father was in the employment of the respondent - Agricultural Produce Market

Committee (hereinafter **APMC**) and died in harness on 01-12-2017 while being in service. The petitioner has been claiming appointment on compassionate ground. He would submit that though the petitioner had appeared for a direct selection process as the driver, in writ petition no. 6394 of 2018 by the order dated 31-01-2019, he was not held eligible to be appointed directly but it was observed that his case could be considered for appointment to the class-III or class-IV post commensurate with his qualification. It was also observed that since the post was not vacant with the respondents, they were directed to appoint him on contract basis for seasonal work and to appoint him on the post of class-III or class-IV as and when the post would become vacant if he was otherwise possessing the requisite qualification.

5. Mr. Tausif would submit that by filing writ petition no. 12996 of 2019 in which the order under review was passed, the petitioner intended to challenge the advertisement published by the APMC for recruitment and the appointment orders given pursuant to such process. He also claimed appointment on the vacant post of clerk. He would submit that petitioner's claim for being appointed on compassionate ground has been turned down by the order under review, it is an error apparent on the face of the record and it is a fit case for review.

6. We have carefully perused the papers including the orders passed by this Court (supra).

7. It is eminent that the petitioner has been riding two horses. He has been claiming appointment on compassionate ground but simultaneously participated in a direct recruitment process. In the petition in which the order under review was passed, he made following prayers :

*“B. By issuing writ of mandamus and or any other appropriate writ, order and / or direction in the like manner, appointment orders dt. 18/05/2018 at **Exhibit-K** issued by the office of A.P.M.C., Beed in pursuance to advertisement dt.07.03.2018 may kindly be quashed and set aside.*

*C. To hold and declare that the appointment orders dt.18/05/2018 at **Exhibit-K** issued by the office of A.P.M.C. Beed in pursuance to advertisement dt.07/03/2018 is an illegal and arbitrary act.*

D. By issuing writ of mandamus and or any other appropriate writ, order and / or direction in the like manner, respondent nos. 4 and 5 may kindly be directed to appoint the petitioner on the vacant post of clerk in their office.

E. Pending hearing and final disposal of this Writ Petition, the respondent no. 4 and 5 may kindly be directed to restrain themselves from recruiting and / or filling the said vacant post of ‘clerk’ or any other vacant class III / IV vacant post in their office.

F. Any other relief may kindly be granted in favour of the petitioner.”

8. In view of such complex prayers, in paragraph no. 3 of the order under review, we expressly mentioned about having enquired with the learned advocate for the petitioner as to on what basis the

petitioner was claiming appointment whereupon the query was responded by saying that he was simultaneously seeking employment on both counts, through the selection process as well as on compassionate ground.

9. We expressly noted that such an approach was totally unacceptable. It is in view of such peculiar state of affairs that we had dismissed the petition with the following observations in paragraphs no.

5 to 8 :

"5. We first examine the claim of the petitioner for compassionate appointment. The petitioner's father was working on the post of driver in Agricultural Produce Market Committee, Beed (hereinafter referred to as the 'A.P.M.C.'). He died of heart attack on 01.12.2017. The petitioner made applications for grant of compassionate appointment on 18.12.2017, 19.12.2017, 19.01.2018 and 08.03.2018. In the meantime, direct recruitment process was initiated inter alia for the post of driver vide advertisement dated 07.03.2018. The petitioner applied in pursuance of the said advertisement and participated in the selection process by appearing for interview on 14.03.2018. He thereafter submitted application dated 22.03.2018 seeking compassionate appointment on the post of driver. In the said application, he also buttressed his claim for direct recruitment in pursuance his participation in the selection process. Thereafter, the petitioner continued pursuing his case for grant of compassionate appointment on the post of driver. However, perusal of the prayers made in the present petition would indicate that the petitioner is claiming appointment on the post of Clerk. It appears that he also filed Writ Petition No.6394 of 2018 which was disposed of by order dated 31.01.2019 observing that though the petitioner was seeking appointment on compassionate ground he had participated in the selection process, but was not selected. It was specifically recorded in the order that no vacant post was available in APMC for petitioner's compassionate appointment. It is purely on account of request made by the petitioner that this Court granted liberty to APMC to appoint him on contract basis for seasonal work and to further consider his case for compassionate appointment as and when vacancy arises. APMC has filed affidavit-in-reply stating that no post of clerk is vacant for consideration of the case of the petitioner on compassionate

ground. It is stated that only 5 vacant posts i.e. Secretary (Open), Accountant (Open), Supervisor (ST) and Junior Clerk (ST) exist in APMC, against none of which the petitioner can be appointed.

6. Considering the facts and circumstances of the case and particularly the conduct of the petitioner in participating in the direct recruitment process, we do not find that any case is made out for exercise our discretionary jurisdiction.

7. Now, we turn to the claim of the petitioner based on his participation in the direct recruitment process. He participated for appointment on the post of driver and secured only 4 marks in the selection process. Candidate securing higher marks in the selection process came to be appointed. The petitioner secured lowest marks amongst 9 candidates in the selection. Therefore, we do not find any error is committed in the selection process.

8. Despite participating in selection process for the post of Driver, the petitioner has sought a prayer for appointment on the post of clerk in the present petition. We deprecate this conduct of the petitioner.”

10. In our considered view, the observations are self-speaking and sufficient to dislodge the petitioner's claim. No error apparent on the face of the record was committed so that we could invoke the powers of review under section 115 of the Code of Civil Procedure. The application for condonation of delay is dismissed with costs of Rs.25,000/- (Rs. Twenty Five Thousand).

[ABHAY S. WAGHWASE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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