

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

WRIT PETITION NO.10501 OF 2023

**RAJESH WAMANRAO BIRADAR
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND ANOTHER**

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Mr. G. N. Kulkarni, Advocate h/f Mr. V. S. Patil, Advocate for Petitioner
Mr. S.K. Tambe, AGP for Respondent - State

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 25.08.2023

PER COURT :-

1. The Petitioner's father died on 12.11.2013. The Petitioner has a qualification of H.S.C., MS-CIT and Diploma in Fire Safety. He has applied for compassionate appointment on 16.12.2013. The Petitioner has been informed by his father's employer, vide communication dated 02.06.2022, that his father was a daily wager and there was no post available for regularisation. The 42nd meeting of the Managing Board was conducted on 25.08.1995, and resolution No.7 was passed concluding that, *"(Vi) the posts will be continued only up to the time these persons are in service. On their retirement/resignation*

or otherwise the concerned posts shall stand lapsed/abolished.” The Petitioner contends that there are several posts available.

2. In ***Ahmednagar Mahanagar Palika Vs. Ahmednagar Mahanagar Palika Kamgar Union – (2022) 10 SCC 172***, the Hon’ble Supreme Court held in paragraph no. 16, as under:-

"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."

3. Even otherwise, the post on which permanency was granted to the father of the Petitioner, was by way of a one time scheme for absorption of daily wagers. The post was abolished after his demise. Hence, if compassionate appointment is granted to the Petitioner, it would be possible only if some other post, which is sanctioned and vacant, will have to be made available for him. The Hon'ble Supreme Court has crystalised the law that compassionate appointment is neither a source of employment nor is it a right to be exercised.

4. In addition to the above, the Petitioner got married in 2018, which is five years after his father passed away. He now has two children. He is employed in a company known as Herman Phenochem Ltd. as a contractual employee.

5. In the light of the above, we do not find that this case deserves any indulgence. The same is without merit. **Hence, this Petition is dismissed.**

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

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