

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

907 WRIT PETITION NO.11097 OF 2023

**PRASAD SURENDRA HATKAR
VERSUS
THE STATE OF MAHARASHTRA
THROUGH ITS PRINCIPAL SECRETARY AND OTHERS**

...
Advocate for Petitioner : Mr. Shinde Dhananjay M.
AGP for Respondents/State : Mr. S.K. Tambe
Advocate for R/2 to 4 : Ms. Yogita Thorat
...

**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.
DATE : 8th September, 2023**

PC. :-

1. This matter was heard on 06.09.2023 and considering the peculiar issue which required urgent attention, we have posted the matter today.
2. Issue notice to the Respondents and by consent, the notice is made returnable today. The learned AGP waives service of notice on behalf of Respondent No.1. The learned advocate Smt. Yogita Thorat Kshirsagar waives service of notice on behalf of Respondent Nos.2, 3, 4 and 5.
3. The issue before us is that the Petitioner lost his father on 18.05.2018 after suffering from Cancer for a long time. The Petitioner tendered an application on 31.05.2018 seeking compassionate appointment.

The Petitioner's name was included in the waiting list on 31.07.2020 and maintained in the list on 31.07.2021 and 30.06.2022. Surprisingly, his name was deleted on 31.03.2023 on the ground that his father had obtained voluntary retirement on 02.05.2018 and, therefore, as he sought voluntary retirement, the Petitioner is not entitled for compassionate appointment in the light of Clause-2 (1) of the GR dated 22.08.2005.

4. We have considered the strenuous submissions of the learned advocate for the Zilla Parishad who has not only vehemently opposed this petition, but has prayed for costs to be imposed while dismissing the petition.

5. It is undisputed that the Petitioner's father was suffering from a terminal illness. It is also undisputed that the Petitioner's father passed away on 18.05.2018. The Zilla Parishad has placed before us a copy of the order dated 02.08.2018 passed by the C.E.O., Zilla Parishad, Nanded wherein it has been stated that the father of the Petitioner was declared unfit because of his terminal illness (Cancer) by the Medical Board of the Dr. Shankarrao Chavan Govt. Medical College and Hospital, Nanded vide their communication dated 02.05.2018. Hence the C.E.O. passed an order on 02.08.2018 declaring that the father of the Petitioner is deemed to have been relieved from service w.e.f. 02.05.2018.

6. This Court has crystallized the law on termination from service with retrospective effect. The same would also apply to cases wherein an employer attempts to discharge the services of an employee and relieves him from employment with retrospective effect. The observations in **Asaram Raibah Dhage V/s. Executive Engineer & Ors.; 1989 II CLR 331**, wherein this Court has observed that it is astonishing to know that a person has been terminated with retrospective effect. It has also been concluded that not even a daily wager, much less a permanent employee, could be discharged from service with retrospective effect. What has been held with regard to termination and discharge in **Asaram Raibah Dhage** (supra), would *pari materia* apply even to cases wherein an employer discharges an employee as having been deemed to be relieved with retrospective effect.

7. In view of the above, the order dated 02.08.2018 will have to be interpreted as being unsustainable and it cannot be made applicable with retrospective effect. In the peculiar facts of this case, the said order would be rendered infructuous and ineffective in view of the fact that the father of the Petitioner passed away on 18.05.2018.

8. Considering the fact situation as above, we hold that the Petitioner's father was in employment till the date of his death since no order of

relieving him from service was passed until his demise. In these circumstances, Clause-2 (1) of the GR dated 22.08.2005 would not be applicable.

9. **This petition is, therefore, allowed.** The Petitioner's name shall continue to be on the waiting list from the date of his application which is 31.05.2018. Needless to state, the Petitioner would be considered on the basis of his seniority number as in the first waiting list prepared on 31.07.2020 and the said seniority will be maintained as per the latest serial number of the Petitioner by taking into account the date of his application as 31.05.2018. Considering his qualifications, if a post is available, he would be appointed on compassionate basis.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]