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

118 WRIT PETITION NO.12834 OF 2023

**NITIN BHIMRAO BACHUTE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
PRINCIPAL SECRETARY AND OTHERS**

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Mr S. S. Thombre, Advocate for Petitioner;
Mr P. K. Lakhotiya, A.G.P. for Respondents/State

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

DATE : 17th October, 2023

PER COURT:

1. By this Petition, the Petitioner, who is a 40 years old businessman, seeks compassionate appointment on the ground that his father passed away 20 years ago on 03/08/2003 and he was covered under the 'Maruf Settlement'.

2. The Petitioner relies upon certain order passed by this Court with regard to compassionate appointment in place of a person, who was covered by the 'Maruf Settlement'. The said orders are placed on record from Page Nos.64 to 78.

(2)

In the first order dated 28/11/2008, passed in Writ Petition No.5501/2008, the claim of the Petitioner was rejected on 05/10/2006. His father expired on 17/04/2004. This Court, by a short judgment, concluded that, under the 'Maruf Settlement', the said Petitioner Sharad Vishnu Mali had prayed for compassionate appointment within 5 years.

In the order dated 17/10/2011, delivered in Writ Petition No.5286/2011, the claim of the Petitioner was rejected only for the reason that, there was no provision for compassionate appointment under the 'Maruf Settlement'. This Court, therefore, granted relief to the Petitioner.

In the judgment dated 12/11/2013, delivered in Writ Petition No.6225/2013, the death had occurred on 24/01/2007 and the application for compassionate appointment was filed within limitation. Since the deceased person was covered by 'Maruf Settlement, the claim was entertained.

In the order dated 30/10/2014, delivered in Writ Petition Nos.7563/2014 and 7566/2014, the father of the Petitioner had died and this Court, therefore, directed that the claim of the Petitioner be considered for compassionate

(3)

appointment as the deceased father was covered by the 'Maruf Settlement'. Similar is the order dated 28/01/2019 in Writ Petition No.12874/2018, wherein the father of the Petitioner had died and he was covered by the 'Maruf Settlement.

3. More than five decades ago, an issue with regard to service conditions was raised by the Marathwada Zilla Paishad Kamgar Union, addressed to the Chief Executive Officer, Zilla Parishad, Beed. This was resolved in the form of an agreement, that was arrived at with the intervention of Shri. B. M. Maruf, on 10/08/1970. The said agreement, ever since has been commonly known as the 'Maruf Settlement'. By the said Settlement, the workers, who were working in the Maintenance Department of Roads, Canals and Buildings, were granted the pay-scales w.e.f. 01/04/1970. Those employees, who were not covered in category A-1 to A-3, were given the pay-scales as per the Notification published in the Maharashtra Government Gazette, Part 48, dated 03/07/1969.

4. Thereafter, pay-scales as were revised from time to time by the Government or by the Zilla Parishad, were made applicable to the employees of the Zilla Parishad. In cases of

(4)

differences or discrepancies, the employees were paid the pay-scales as applicable to the employees working in the Building and Constructions Department. The Dearness Allowance for these employees was also declared by the Government from time to time. The Settlement also fixed the terms of gratuity payable to such employees.

5. For the sake of details, the Complainant Union had come up with the case that the Zilla Parishad, Beed had wrongly issued the notice dated 31.10.1980 seeking termination of the 'Maruf Settlement'. After receiving the notice on 08.11.1980, the Union submitted its fresh charter of demands on 01.01.1981. After the notice of termination of the 'Maruf Settlement' was issued, the Zilla Parishad started paying the wages on daily rates. The dispute reached the Industrial Court through Complaint (ULP) No.228/1985. The Industrial Court, by its judgment and order dated 22.04.1987, issued the following directions :-

“1. It is hereby declared that the respondent has committed an unfair labour practice under Item No.9 of Sch.IV of the MRTU & PULP Act, 1971.

(5)

2. The respondent is further directed to cease and desist from committing such unfair labour practice.

3. The respondent is also directed to continue to give the benefits of Maruf Settlement dtd. 18.08.1970 until a fresh Settlement or Award takes place.

4. This order shall take effect after one month from today.

5. No order as to costs.”

6. In the above backdrop, the workers were given an option of taking benefits either under the ‘Kalelkar Award’ or under the ‘Maruf Settlement’. Such option could be exercised while being in service.

7. It is not clear that the ‘Maruf Settlement’ would cover the case of the Petitioner’s father. The Petitioner’s father passed away on 03/08/2003. The Government of Maharashtra introduced compassionate appointment scheme in 1974. The Petitioner, who is 40 years of age today, operating his business, applied for compassionate appointment on 30/08/2016, under the Kalelkar award and on 16/10/2018. He forwarded another application dated 20/10/2022, seeking compassionate appointment, under the

(6)

‘Maruf Settlement. The first application was filed after 13 years of the demise of his father.

8. The learned Advocate for the Petitioner submits that, the clause of compassionate appointment was introduced in the Maruf settlement in 2018. He had made an application under the Kalelkar Settlement in 2016 for compassionate appointment and with the introduction of the clause in the ‘Maruf Settlement’, he moved an application in 2018. The learned A.G.P. submits that this submission should not be entertained and also submits that this is an unending exercise and merely because of change in policies, does not mean people should wake up and come forward with an application after 20 years of the demise of their bread earner.

9. The learned Advocate for the Petitioner has strenuously canvassed that, notwithstanding the passage of time of 20 years and 5 months, the Petitioner would be eligible today for compassionate appointment.

10. The learned A.G.P. points out that the Petitioner is 40 years of age, he is married having children and the title clause indicates that, he is a businessman. He refers to the observations

made by the Hon'ble Supreme Court in paragraph No.16 in **Ahmednagar Mahanagar Palika Vs. Ahmednagar Mahanagar Palika Kamgar Union, (2022) 10 SCC 172**, which read 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.”

11. In the **State of West Bengal Vs. Debabrata Tiwari and others, 2023 SCC OnLine SC 219**, the Hon’ble Supreme Court dealt with granting of compassionate appointment by the High Court by allowing the appeals of the Respondents after a passage of a considerable time and without considering the financial status of the family members. While concluding, the Hon’ble Supreme Court held that the application for compassionate appointment could not be considered after several years, inasmuch as, it could not have been kept pending, to be decided after several years since it’s filing.

12. In view of the above and taking into consideration that the first application was filed after 13 years of the demise of the father of the Petitioner and with the passage of 20 years today, keeping in view that the Petitioner is well settled in life and is a businessman, we do find that this Writ Petition can be entertained.

13. As such, **this Writ Petition is dismissed.**

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)