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(REPORTABLE)

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

922 WRIT PETITION NO. 12897 OF 2023

**LATIKABAI UTTAM MAHAJAN
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
AND OTHERS**

....
Ms Akshara Madake, Advocate for Petitioner.
Mr S. K. Tambe, A.G.P. for Respondent Nos.1 to 3.
Mrs Anjali Dube, Advocate for Respondent Nos.4 to 6.

....

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

DATE : 21st December, 2023

ORAL ORDER (*Per Ravindra V. Ghuge, J.*) :

1. On 18/10/2023, we directed the Petitioner to add the second wife Chhaya Uttam Mahajan and her son Rajesh Uttam Mahajan, born out of her relationship with the deceased, as Respondents. Since notice was not served for a long time upon them, we passed the order dated 07/11/2023, permitting the Petitioner to have the notice published in a largely circulated newspaper 'Dainik Divya Marathi'. A copy of the newspaper publication, dated 28/11/2023, is placed on record, wherein the

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names of the added Respondents have been mentioned and details of this Writ Petition are also set out.

2. The names of the added Respondents were pronounced in the open Court to find out, as to whether they are present in the Court. There is no response. Nobody has appeared, either in person or through the VC mode.

3. Issue is as regards an application seeking compassionate appointment with the Municipal Corporation at Chhatrapati Sambhajanagar. The husband of the Petitioner passed away on 27/03/2012. He was working on the post of 'Mali' as a permanent employee. He had few years to go for retirement. The Petitioner as well as the added Respondent No.7/ Chhaya, both applied for compassionate appointment. In the meanwhile, Chhaya acquired a succession certificate under the orders of the Competent Court in MARJI No.420/2012, on 09/11/2012. This order was sought to be revoked by the present Petitioner in MARJI No.1097/2012. This proceeding was contested by Chhaya. By the judgment dated 09/02/2018, the Competent Court allowed the Petition and the succession certificate issued in favour

of Chhaya, was revoked. It was concluded that the present Petitioner is the first wife.

4. There is no dispute that the Petitioner had applied for compassionate appointment on 30/11/2012, within 8 months after her husband passed away on 27/03/2012.

5. The Petitioner widow has put forth prayer clauses B, C, D, E and F as under :-

- “B. By issuing Writ of Mandamus or any other appropriate Writ, order in the like nature, the Respondents may kindly be directed to consider the application of the Petitioner for giving appointment order on compassionate ground of her deceased husband by granting age relaxation as per the Scheme for Compassionate Appointment Under Central Government and for that purpose issue necessary order;*
- C. By issuing Writ of Mandamus or any other appropriate Writ, order in the like nature, the Respondents may kindly be directed to pay the salary of the petitioner from year 2012-13 as compensation to the Petitioner for the negligence of Respondent authorities and for that purpose issue necessary order;*
- D. By issuing Writ of Mandamus or any other appropriate Writ, order in the like nature, the Respondent no.1 may kindly be directed to amend the GR dt.21.09.2017 and allow the relaxation in upper age limit in exceptional and/or special cases as per the Scheme for Compassionate Appointment*

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Under Central Government and for that purpose issue necessary order;

E. Pending hearing and final disposal of this Writ Petition, the Respondents may kindly be directed to consider the application of the Petitioner for giving appointment order on compassionate ground of her deceased husband by granting age relaxation as per the Scheme for Compassionate Appointment Under Central Government and for that purpose issue necessary order;

F. Pending hearing and final disposal of this Writ Petition, the Respondents may kindly be directed to pay the salary of the petitioner from year 2012-13 as compensation to the Petitioner for the negligence of Respondent authorities and for that purpose issue necessary order;”

6. The learned Advocate representing the Corporation submits on instructions that the Petitioner is 49 years of age as on date and her claim cannot be considered.

7. The learned Advocate for the Petitioner has drawn our attention to the updated ‘Scheme for Compassionate Appointment Under Central Government’, dated 02/08/2022. The same is admittedly adopted by the State of Maharashtra. The exemptions in the Scheme are provided at Clause 7(A) and relaxations are provided at Clause 7(B), which read as under :-

“7A. EXEMPTIONS

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Compassionate appointments are exempted from observance of the following requirements:-

- (a) Recruitment procedure i.e. without the agency of the Staff Selection Commission or the Employment Exchange.*
- (b) Clearance from the Surplus Cell of the Department of Personnel and Training/ Directorate General of Employment and Training.*
- (c) The ban orders on filling up of posts issued by the Ministry of Finance (Department of Expenditure).*

[Para 6 A of DOPT O.M. No. 14014/6/94-Estt. (D) dated 09.10.1998]

7B. RELAXATIONS

- (a) Upper age limit could be relaxed wherever found to be necessary. The lower age limit should, however, in no case be relaxed below 18 years of age.*

Note I Age eligibility shall be determined with reference to the date of application and not the date of appointment;

Note II Authority competent to take a final decision for making compassionate appointment in a case shall be competent to grant relaxation of upper age limit also for making such appointment.

[Para 6 B of DOPT OM. No. 14014/6/94-Estt. (D) dated 09.10.1998]

- (b) In exceptional circumstances Government may consider recruiting persons not immediately*

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meeting the minimum educational standards. Government may engage them as trainees who will be given the regular pay bands and grade pay only on acquiring the minimum qualification prescribed under the recruitment rules. The emoluments of these trainees, during the period of their training and before they are absorbed in the Government as employees, will be equal to the lowest/ first cell (minimum) of Pay Level-1 Rs. 18,000-56,900 (pre-revised -1S pay band). In addition, they will be granted all applicable Allowance, like Dearness Allowances, House Rent Allowance and Transport Allowance at the admissible rates. The same shall be calculated on the minimum of Pay Level-1. The period spent in Pay Level-1 by the future recruits will not be counted as service for any purpose as their regular service will start only after they are appointed in the Group 'C' post after acquiring minimum educational qualifications. The pay of those governed by the 1S scale under 6th CPC Pay Rules may be revised by using the Fitment Factor of 2.57 for placement in Level-1 in conformity with the Rule 7 of the CCS (RP) Rules, 2016. All pre-revised pay stages lower than pre-revised pay of Rs.7,000 in the pre-revised IS scale shall not be considered for determining the benefit of bunching, on the same lines as has been clarified by Department of Expenditure's O.M dated 03.08.2017 on application of the benefit on account of bunching. This will be effective from 01.01.2016.

[Para 1 of O.M. No.14014/2/2009-Estt. (D) dated 11.12.2009 and

Para 2 of O.M. No.14014/2/2009-Estt. (D) dated 09.10.2017]

Note:- In the case of an attached/ subordinate office, the Secretary in the concerned

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administrative Ministry/ Department shall be the competent authority for this purpose.

- (c) In the matter of exemption from the requirement of passing the typing test those appointed on compassionate grounds to the post of Lower Division Clerk will be governed by the general orders issued in this regard:-*
- (i) by the CS Division of the Department of Personnel and Training if the post is included in the Central Secretariat Clerical Service; or*
- (ii) by the Establishment Division of the Department of Personnel and Training if the post is not included in the Central Secretariat Clerical Service.*

[Para 6 of DOPT O.M. No. 14014/6/94-Estt. (D) dated 09.10.1998]

- (d) In case of appointment of a widow not fulfilling the requirement of educational qualification, against the post of MULTI TASKING STAFF, she will be placed in minimum of Pay Level-1(Rs. 18,000-56,900) directly without insisting on fulfillment of educational qualification norms, provided the appointing authority is satisfied that the duties of the post against which she is being appointed can be performed with help of some on job training. This dispensation is to be allowed for appointment on compassionate ground against the post of MULTI TASKING STAFF only.*

[Para 2 of O.M. No. 14014/2/2009-Estt. (D) dated 03.04.2012]”

8. In Sub-clause (a) below Clause (B), it is prescribed that the upper age limit can be relaxed wherever found to be necessary though the lower age limit of 18 years cannot be relaxed. There is no dispute that the upper limit is 45 years. Note (I) there-below indicates that, age eligibility shall be determined with reference to the date of application and not the date of appointment. Note (II) thereunder permits the Authority Competent to take a final decision for making compassionate appointments by granting relaxation to the upper age limit.

9. The learned Advocate for the Corporation relies on Clause 11 (aa) of the Government Resolution dated 21/09/2017, introduced by the State of Maharashtra, to contend that the moment the age of an enlisted candidate crosses 45 years, the name of a candidate is instantaneously deleted from the list.

10. The learned Advocate for the Petitioner submits that this clause runs counter to Clause 7(B) (a) Note (I) and (II) of the Scheme for Compassionate Appointment under Central

Government, updated on 02/08/2022 by the Ministry of Personnel, Public Grievances and Pensions.

11. There is a direct challenge to Clause (aa) below Clause 11 of the Government Resolution dated 21/09/2017. This issue has a great significance. The learned Advocate for the Corporation has addressed us that this Clause would be a strict impediment to the case of the Petitioner. The said Clause has been specifically challenged by the Petitioner vide prayer clause (B) and foundational pleadings in support thereof, have been set out in the Petition memo.

12. The golden Rule of interpretation of law and Statutes is that the interpretation should not lead to rendering one provision redundant or otiose. If a harmonious interpretation is to be drawn, the provision under the Central Government Scheme, which has been adopted by the State of Maharashtra, will have to be given weightage, more so, in the light of the recent order passed by the Hon'ble Supreme Court, dated 06/11/2023, in Civil Appeal No.7489/2023, **Govinda Janardan Gaikwad VS. State of Maharashtra and others**, wherein it has been held that the

concept of welfare State would restrain a Respondent from raising a contention that, by passage of time, the candidate would not be entitled for making a claim. In the instance case before us, the Petitioner is 49 year of age. She is receiving pension of Rs.8300/- per month.

13. In *Haridas Gangaram Kamble and others v/s Stat of Maharashtra, 2023 DGLS (Bom) 1826 : (Writ Petition No.1777/2023 (Aurangabad Bench) decided on 15.02.2023)*, this Court held in paragraphs 23 to 27, as under :-

“23. In the case in hand, we find that the object behind the classification made by the State Government for protecting the Kotwals from losing the employment opportunities as Peons, would be further promoted if we read down the said G R, to cause an equitable apportionment of the chances, of being appointed as Peons, to those who are identically placed. It would result in effectuating the underlined purpose and true intention behind the said G R. We are of the view that the object behind introducing the said G R. evidently was not to deprive similarly situated Kotwals from the opportunity of being appointed as Peons.

24. In *Bennett Coleman & Co. vs. Union of India, (1972) 2 SCC 788*, the Honourable Supreme Court concluded that the crucial question was as regards Article 14, as to whether, the command implicit in it constitutes merely a bar on the creation of inequalities by the State or a command as well, to eliminate inequalities existing without any contribution thereto by the State action. It has been

said that ‘justice is the effort of a man to mitigate the inequality of men’. The whole drive of the directive principles of the Constitution is toward this goal and it is in consonance with the new concept of equality.

25. *Dealing with the question whether, the court could grant any relief by enlarging the ambit of the scheme, the Honourable Supreme Court held in paragraphs 84 to 90 in Secretary, Mahatma Gandhi Mission and another vs. Bhartiya Kamgar Sena and others, (2017) 4 SCC 449, as under:-*

“84. *In a similar situation, a Constitution Bench of this Court has in D.S. Nakara & Others v. Union of India (1983) 1 SCC 305 adopted a more innovative procedure of directing the State to fill up the lacuna by extending the benefit uniformly to all the people who are otherwise similarly situated.*

85. *The facts of D.S. Nakara’s case are:*
 “5. On May 25, 1979, Government of India, Ministry of Finance, issued Office Memorandum No. F-19(3)-EV-79 whereby the formula for computation of pension was liberalized but made it applicable to government servants who were in service on March 31, 1979 and retire from service on or after that date (‘specified date’, for short) ...
 6. ... Consequently those who retired prior to the specified date would not be entitled to the benefits of the liberalized pension formula.”

This Court made an elaborate examination of the concept of pension and its legal implications; the obligations of State under the Constitution of India flowing from the directive principles and a host of other factors. The Court recorded a conclusion.

“43. *Further the classification is wholly arbitrary because we do not find a single acceptable or persuasive reason for this division. This arbitrary action violated the guarantee of Article 14. The next question is what is the way out?*”

86. *The Court was then confronted with a question whether the court could grant any relief by enlarging the ambit of the scheme. Incidentally this Court had to deal with a submission that such a course of action was unprecedented:*

“40. ... Alternatively, it was also contended that where a larger class comprising two smaller classes is covered by a legislation of which one part is constitutional, the court examines whether the legislation must be invalidated as a whole or only in respect of the unconstitutional part. It was also said that severance always cuts down the scope of legislation but can never enlarge it and in the present case the scheme as it stands would not cover pensioners such as the petitioners and if by severance an attempt is made to include them in the scheme it is not cutting down the class or the scope but enlarge the ambit of the scheme which is impermissible even under the doctrine of severability. In this context it was lastly submitted that there is not a single case in India or elsewhere where the court has included some category within the scope of provisions of a law to maintain its constitutionality.”

This court rejected the submission based on the lack of precedent, holding:

“41. The last submission, the absence of precedent need not deter us for a moment. Every new norm of socio-economic justice, every new measure of social justice commenced for the first time at some point of history. If at that time it is rejected as being without a precedent, the law as an instrument of social engineering would have long since been dead and no tears would have been shed. To be pragmatic is not to be unconstitutional. In its onward march law as an institution ushers in socio-economic justice. In fact, social security in old age commended itself in earlier stages as a moral concept but in course of time it acquired legal connotation. The rules of natural justice owed their origin to ethical and moral code. Is there any doubt that they have become the integral and inseparable

parts of rule of law of which any civilised society is proud? Can anyone be bold enough to assert that ethics and morality are outside the field of legal formulations? Socio-economic justice stems from the concept of social morality coupled with abhorrence for economic exploitation. And the advancing society converts in course of time moral or ethical code into enforceable legal formulations. Overemphasis on precedent furnishes an insurmountable road-block to the onward march towards promised millennium. An overdose of precedents is the bane of our system which is slowly getting stagnant, stratified and atrophied. Therefore, absence of a precedent on this point need not deter us at all. We are all the more happy for the chance of scribbling on a clean slate.” and the Court finally concluded as follows:

“65. That is the end of the journey. With the expanding horizons of socio- economic justice, the Socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criterion: “being in service and retiring subsequent to the specified date” for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of “being in service on the specified date and retiring subsequent to that date” in impugned memoranda, Exs. P-1 & P-2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down. ... Omitting the unconstitutional part it is

declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalised pension scheme from the specified date, irrespective of the date of retirement. Arrears of pension prior to the specified date as per fresh computation is not admissible. Let a writ to that effect be issued. But in the circumstances of the case, there will be no order as to costs.”

87. *When Justice Mathew declared that Article 14 interdicts the State from creating inequalities, he was stressing the obvious. Further, he articulated the remedial measures the State has been enjoined to take recourse to: eliminate the existing inequalities through positive- affirmative-action, rather than passive neutrality.*
88. *What is the remedy open to the citizen and the corresponding obligation of the judiciary to deal with such a situation, where the inequalities are created either by the legislation or executive action? Traditionally, this Court and the High Courts have been declaring any law, which created inequalities to be unconstitutional, but in Nakara’s case this Court realised that such a course of action would not meet with the obligations emanating from a combined reading of the directive principles and Article 14. Therefore, this Court emphatically laid down in Nakara’s case that it is possible to give an appropriate inductive relief by eliminating the factors, which creates the artificial classification leading to a discriminatory application of law.*
89. *Though this Court is not bound by the law declared by the municipal courts of other countries, this court in the last 70 years always examined with due regard decisions of the American Supreme Court on questions of constitutional law. In a comparable situation, American courts did exercise jurisdiction by granting appropriate injunctive orders compelling the State to comply with the constitutional mandate by ignoring the legislative*

command and extending the benefit provided under a legislation to a certain class of people who were expressly excluded from receiving that benefit provided by the legislation.

90. *Notwithstanding the wholly unsatisfactory reasoning adopted by the High Court for allowing the claims of the writ petitioners, (the respondents herein), we are convinced that the conclusion of the High Court could be justified on basis of the principle enunciated in D.S. Nakara's case."*

26. *In view of the above, while upholding clause 1 of the said Government Resolution dated 17.12.2021, we would read down the same in a manner so as to ensure that the aforesaid measure would sub-serve the purpose for which the said Government Resolution was introduced.*

27. *In fact, the said G R ought to have considered the fact that the reason for which some of the Kotwals became age barred, was equally applicable to these petitioners and similarly situated Kotwals. We, therefore, conclude that this is an appropriate case for reading down the said Government Resolution dated 17.12.2021. The benefit of the said GR, which covers the recruitment process that was initiated by the communication dated 02.6.2022, deserves to be extended even to these petitioners. Hence, the State Government is at liberty to suitably add/modify clause 1 of the said Government Resolution, dated 17.12.2021."*

14. Considering the above legal position, since the Central Government Scheme has been adopted by the State of Maharashtra, and as clause 11(aa) clearly runs counter to clause 7(B), we conclude that Clause 11 (aa) under Annexure 'A' of the

Government Resolution dated 21/09/2017, would not be applicable to cases wherein the candidate has applied for compassionate appointment within limitation and was eligible when the application was tendered. Subsequently, if such candidate crosses 45 years of age only because of the pendency of the application or awaiting a vacancy, his/her name cannot be automatically deleted from the list in which he/she has been included. We are fortified in our above conclusion by Clause 7(B) (a) Note (I) and (II), read with the order of the Hon'ble Supreme Court in Govinda Janardan Gaikwad (supra).

15. In view of the above, **this Writ Petition is partly allowed.** We direct the Municipal Corporation to take a decision on the claim of the Petitioner, who is already enlisted in the light of her application dated 30/11/2012, in view of the directions issued by the Hon'ble Supreme Court in Govinda Janardan Gaikwad (supra). Necessary action shall be taken by the Corporation within a period of 3 months from today.

16. We keep the issue of the prayer of the Petitioner to seek damages for delayed action on the part of the Corporation, open.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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