



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

WRIT PETITION NO. 14023 OF 2018

**MUMTAZ BEGUM BADRE ALAM SIDDIQUI AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Mr. Vishal Bagal, Advocate h/f Mr. M. K. Jadhav, Advocate for the
Petitioners

Mr. M. M. Nerlikar, AGP for Respondent No.1 – State

Mr. S. R. Yadav – Lonikar, Advocate for Respondent Nos. 2 and 3

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

DATE : 29.08.2024

FINAL ORDER [PER: RAVINDRA V. GHUGE, J]

1. On 22.02.2024, we had delivered a lengthy speaking order. For ready reference, the said order is reproduced hereunder:-

“1. Petitioner No.1 is the widow of the deceased workman who passed away on 18.12.2014. Her name was listed as an eligible candidate for appointment on compassionate basis. Subsequently, the name was deleted, the moment she became 45 years of age. On the ground that substitution is not permissible, the application of Petitioner No.2, son of the deceased and the widow, was not entered in the list.

2. Both the above grounds are not available to the Zilla Parishad. By an order of this Court in *Dnyaneshwar Ramkishan Musane Vs. State of Maharashtra and Others* [2020(5) Mh.L.J.381], substitution is possible. Nevertheless, on the issue of continuing an eligible candidate in the said list even after crossing 45 years of age, this Court, by the judgment dated 21.12.2023 delivered in WP No.12897/2023 (*Latikabai Uttam Mahajan Vs. State of Maharashtra and Others*), has recorded in paragraph Nos. 6 to 14, as under :-

“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

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 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 1S 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 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*

15.02.203), 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 subservise 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)."

3. As such, considering the provisions as well as the law laid down by the Hon'ble Supreme Court in Civil Appeal No.7489/2023 dated 06.11.2023 in Govinda Janardan Gaikwad Vs. The State of Maharashtra and others, the name of Petitioner No.1 cannot be deleted only on the pretext that she has completed 45 years of age, when her name was enlisted as an eligible candidate for compassionate appointment, when she was within the age limit. We, therefore, direct the Zilla Parishad to restore her name at the same serial number, at which it was earlier mentioned in 2017.

4. As the hearing in this matter progressed to some length, we were informed that the Zilla Parishad has a long list of wait listed candidates for compassionate appointment. One candidate has lost the bread earner in 2006. We are informed that such list is beyond 100.

5. We, therefore, direct the Chief Executive Officer of Zilla Parishad, Parbhani to personally research into these matters and submit his affidavit in the capacity of the C.E.O. to give us the following details :-

[a] The present list of eligible candidates for compassionate appointment, including the name of Petitioner No.1.

[b] The list of compassionate appointments made by the Zilla Parishad since January, 2000 onwards.

[c] The posts of deceased employees on which fresh appointments have been made since January, 2000 onwards.

6. Let such affidavit be filed on or before 08.03.2024.

7. List this Petition on 12.03.2024 in the "Urgent Orders Category".

2. From our above reproduced order, we had directed the Zilla Parishad to list the name of Petitioner No.1 in the wait list of eligible candidates for appointment on compassionate basis and to grant compassionate appointment to her, as per her serial number in the wait list.

3. Today, we are informed that the Petitioner No.1 widow is at serial No.1 in the wait list. However, her age is 51 years and her retirement age is 58 years. In seven years, she would retire. Post retirement, she would not receive pension, since she would not be completing the qualifying service for pension. It is in these peculiar circumstances that the learned Advocate for the Petitioners prays for substitution by relying upon the judgment delivered by this Court in ***Latikabai Uttam Mahajan Vs. The State of Maharashtra and others, 2023 SCC OnLine Bom 2798***. In ***Latikabai (supra)***, as the widow had hardly 6 - 7 years service left and she would not receive pension after retirement, since she would not complete qualifying service, we permitted substitution by deleting her name and include the name of her son for compassionate appointment.

4. The facts of the case in hand are almost identical. The widow was enlisted in 2013. She waited in the hope of receiving compassionate appointment. Because, she completed 45 years of age, her name was deleted from the list. We relied upon the view taken by the Hon'ble Supreme Court in ***Govinda Janardan Gaikwad Vs. The State of Maharashtra and others, Civil Appeal No.7489 of 2023***, decided on 06.11.2023 and we directed inclusion of her name in the wait list. It is now revealed that she is of the age of 51 - 52 years. Naturally she would not complete qualifying service in order to be eligible for pension. Her son, Petitioner No.2 herein, is now 27 years of age. It is stated on instructions that he is unmarried and he is not in employment. He would get 31 years in employment if his name is considered, instead of his mother who is already 51 - 52 years of age. He would get pension on retirement

5. In view of the peculiar facts as recorded above, we direct the Zilla Parishad to substitute the name of Petitioner No.1 with the name of Petitioner No.2, keeping in view the decision of the Full Bench of this Court dated 28.05.2024, delivered in ***Writ Petition No.3701 of 2022 (Kalpana wd/o. Vilas Taram and another Vs. The State of Maharashtra and others)*** and connected matters, wherein, it

is concluded that *Dnyaneshwar Ramkishan Musane Vs. the State of Maharashtra and others, 2020(5) Mh.L.J. 381*, lays down the correct position of law.

6. **This Writ Petition is allowed in the above terms.** Needless to state that, since Petitioner No.2 would be substituted in place of Petitioner No.1, who is at serial No.1 in the wait list, the Petitioner No.2 would be considered for compassionate appointment by considering him to be at the same serial number.

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

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