



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

922 WRIT PETITION NO. 6073 OF 2018

Muktabai Bhaskar Temkar And Another

VERSUS

Ahmednagar Municipal Corporation Through Commissioner

.....

Mr. Parag Barde, Advocate for the Petitioners

Mr. V.S. Bedre, Advocate for the respondent

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CORAM : MANJUSHA DESHPANDE, J.

DATE : 6th MARCH, 2025

ORDER :

1. Petitioners are challenging the judgment and order dated 20.01.2018 passed by learned Member, Industrial Court, Ahmednagar in Complaint (ULP) No. 77/2012, to the extent of rejection of claim of Petitioner No. 2.

2. Petitioner No. 1 is the wife of Bhaskar Temkar and Petitioner No. 2 is the son of Bhaskar Temkar. Father of Petitioner No. 2 expired during his employment with the respondent.

3. It is the contention of petitioner that on 16.07.2012, petitioner No. 1 applied to the respondent for compassionate

appointment, however, it was not attended by the respondent, therefore, She filed Complaint (ULP) No. 77/2012 with a prayer to appoint her on compassionate ground. On 29.11.2014, Petitioner No. 2 also joined complaint claiming compassionate appointment in place of his father. Industrial Court, Ahmendagar was pleased to allow the complaint on 16.04.2015 granting compassionate appointment to Petitioner No. 2. Order passed by Industrial Court was challenged by the respondent before this Court in Writ Petition No. 11012/2015. Writ petition filed by respondent was allowed by this Court vide judgment and order dated 25.11.2016 and the matter was remanded back to the Industrial Court for fresh decision. While remanding the matter back, this Court has certain conditions, which are reproduced here under:

“(a) The litigating sides shall appear before the Industrial Court on 09.12.2016.

(b) Both the litigating sides are at liberty to place on record the relevant documentary material and lead oral evidence in order to prove the documents on which they place reliance.

(c) If Respondent No.2 (Virkam) has not filed an application for seeking appointment on compassionate basis with the Petitioner within the limitation period, his claim for compassionate appointment shall not be considered by the Industrial Court.

(d) Needless to state, the Industrial Court shall be obliged to consider the factors listed in the foregoing paragraphs

of this judgment, while deciding the complaint afresh.

(e) Since the issue of compassionate appointment is involved, the Industrial Court shall endeavour to decide the said complaint as expeditiously as possible, with the due cooperation of the litigating sides."

4. Amongst the aforesaid conditions, in clause (c) it is observed that, if the respondent No. 2 (Vikram) has not filed an application for seeking appointment on compassionate basis with the Petitioner within the limitation period, his claim for compassionate appointment shall not be considered by the Industrial Court.

5. The Industrial Court while deciding the complaint after remand has directed that respondent shall appoint complainant No. 1 Smt. Muktabai Bhaskar Temkar on compassionate ground. So far as claim of Petitioner No. 2- Vikram is concerned, Industrial Court has observed that the complainant No. 2 though fit to perform the job, attained majority on 15.02.2015. The complainant No. 2 applied for appointment by letter dated 5.12.2016, which was not within one year. The Hon'ble High Court in the order dated 25.11.2016 in Writ Petition No. 11012 of 2015 has made it clear that, the claim of complainant No. 2 shall not be considered by this Court

if he has not filed application for appointment on compassionate basis within the limitation. The limitation prescribed is one year, and application of the complainant No. 2 was filed after the period of one year, therefore, the complainant No. 2 cannot be appointed.

6. Learned advocate for the petitioner submits that in fact complainant No. 2 has filed application in the Industrial Court on 28.07.2014, itself and he has joined as complainant in the complaint along with his mother. Therefore, it cannot be said that he has not filed application within limitation. The application before the Industrial Court to add him as complainant in the complaint seeking appointment on compassionate ground has to be treated as application within prescribed period of limitation.

Apart from that learned advocate for the petitioner submits that though order came to be passed in favour of Petitioner No. 1 she was not given appointment on compassionate ground. Since she has attained the age of 45 years, her name is required to be removed from the list of eligible persons claiming compassionate appointment. Therefore, though the order has been passed by the Industrial Court in favour of Petitioner No. 1 is of no consequence. It is his further

contention that while passing the order by this Court in Writ Petition No. 11012/2015, this Court has observed that, application of Petitioner No. 2 should not be considered if it is not filed within limitation. The subsequent development needs to be considered in the matter, more particularly the fact that Petitioner No. 1 on account of attaining age of 45 years could not be appointed on compassionate ground. The the claim of Petitioner No. 2 should be considered for compassionate appointment by substituting Petitioner No. 1 in the list. He places reliance on Full Bench decision of this Court in ***Kalpana wd/o. Vilas Taram vs. State of Maharashtra***, 2024 DGLS(Bom.) 2076, wherein it is declared that substitution of name of another member of family in place of member who has applied, on account of crossing the age limit of 45 years is not contrary to the object and purpose for which compassionate appointment are granted.

7. Therefore, considering the fact that petitioner No. 1 has attained the age of 45 years, claim of Petitioner No. 2 is required to be considered, in view of decision of Full Bench. He places reliance on observations particularly made in para 22, 23 and 24, which reads thus:

"22. In the above-referred backdrop, if we see the meaning of the word 'substitution', it would mean to replace with another or one who stands in another's place or the process by which one person takes the place of another person'.

23. Thus, it is evident that, if a family member of the deceased/incapacitated employee applies for substitution of his name with another family member, it cannot be treated as a fresh application or subsequent application or it cannot be implied that more than one member is seeking compassionate appointment.

24. The scheme permits compassionate appointment to one eligible legal heir of the deceased/incapacitated employee with an object to enable the family to tide over the sudden financial crisis. In the circumstances, if substitution is permitted, it would amount to replacement of name by another name. As substitution does not amount to making of a fresh application or staking a claim by more than one legal heir of the deceased, it cannot be said that substitution would run counter to the purpose and object of compassionate appointment."

8. Learned advocate Shri. Bedre appearing for the respondent submits that in fact neither in the complaint nor in the present writ petition, the petitioners have made an averment that they want to substitute Petitioner No. 2 in the place of Petitioner No. 1. For the first time, the petitioner while making his submission has prayed that Petitioner No. 2 may be substituted in the place of Petitioner No. 1 for compassionate appointment. So far as challenge to the order of Industrial Court

is concerned, already the Petitioner No. 1 has been directed to be considered for appointment on compassionate ground. Therefore, there cannot be any challenge to the order passed by Industrial Court, Ahmednagar.

9. I have heard the respective advocates appearing for the parties and I have also gone through the documents placed on record. There appears substance in the contention of learned advocate for the respondent that the petitioners for the first time are claiming that Petitioner No. 2 should be substituted in the place of his mother in the list of persons eligible to be appointed on compassionate ground. However, it needs to be appreciated that Petitioner No. 2 was also complainant in the complaint filed by petitioners before the Industrial Court, though he was minor. In spite of passing order in favour of Petitioner No. 1, due to challenge to the order he could not be appointed. Though, both petitioners are successful in getting order from the Industrial Court, none of them had been appointed. Though there were positive orders passed in favour of Petitioner No. 1 as well as Petitioner No. 2.

10. The Full Bench has taken a view that substitution of the name of another family member in place of a member who

has applied, on account of crossing age limit of 45 years is permissible and it is further directed that such substitution should not be treated as fresh application or it cannot be implied that more than one member is seeking compassionate appointment. Therefore, I am not inclined to interfere in the finding recorded by the Industrial Court since Industrial Court has passed order taking into consideration the evidence produced on record and the order which was governing the field at the time of passing of order. Therefore, order passed by Industrial Court does not deserve any interference. Writ Petition is dismissed.

11. However, Petitioner No. 2 may approach the respondent-Municipal Corporation and bring it to the notice of respondent that, though the order is passed in favour of Petitioner No. 1, she could not be appointed due to attaining the age of 45 years therefore the name of petitioner No. 1 can be replaced by Petitioner No. 2 in view of the Full Bench decision referred supra.

(MANJUSHA DESHPANDE, J.)