



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

915 CIVIL APPLICATION NO. 4872 OF 2025
IN RAST/12120/2025

SHAIKH KARIM SHAIKH HARUN
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS

.....
Advocate for Applicant : Mr. Chaudhari M.S.
AGP for Respondents/State : Mr. S.D. Ghayal
.....

CORAM : MANISH PITALE &
Y.G. KHOBRAGADE, JJ.
DATE : 10th July, 2025

PC. :-

1. Heard learned counsel for the Petitioner.
2. The Petitioner has filed a review petition seeking review of judgment and order dated 10.06.2024 passed by this Court (Coram : Ravindra V. Ghuge & Y.G. Khobragade, JJ.) and a separate application is also filed seeking condonation of delay of 278 days in filing the petition for review.
3. Having considered the contentions in the application seeking condonation of delay, we are inclined to accept the statements made therein, which demonstrate sufficient cause for condoning delay,

Accordingly, the delay is condoned. The application is allowed and disposed of.

4. The review petition is taken up for consideration. Learned counsel for the Petitioner submits that the said judgment and order of this Court needs to be reviewed in the light of certain order passed by the Maharashtra Administrative Tribunal in Original Application which referred to Government Resolutions while granting relief to the Applicants before the Tribunal. According to the learned counsel for the Petitioner, the Government Resolutions can also benefit the Petitioner, which has not been considered by this Court.

5. It is settled law that a review petition can be entertained and allowed only when an error apparent on the face of record is demonstrated. In this backdrop, when we perused the judgment and order dated 10.06.2024, of which review is sought, we find that the facts have been considered in detail and in paragraph nos.14 to 16, it has been held as follows:

“14. We do not find that the claim of the Petitioner is well placed in the light of the fact that 5.8 clearly provides that even if the close relative of a ‘Safai Kamgar’ is in Government or Semi Government Authorities or employed with the local Authorities, it would not be an impediment for a candidate to seek employment on the basis of the Warsaa Hakka (Right of

Inheritance) which is also known as the Vashila Paddhat (Special Recommendation) in the State of Maharashtra.

*15. The Petitioner's father is a 'Safai Kamgar' and is still in employment. His grandfather was also a 'Safai Kamgar' and so was his great grandfather. According to the Petitioner, though his father is in employment as a 'Safai Kamgar', based on the Lad Page Committee recommendations, there is no impediment to the Petitioner in claiming such employment in view of the fact that his grandfather was in employment on 05.10.1983. We are fortified in our conclusion that the Petitioner cannot claim such employment, by the judgment of the Hon'ble Supreme Court in **Ahmednagar Mahanagarpalika V/s. Ahmednagar Mahanagarpalika Kamgar Union; 2022 III CLR 859**. The Hon'ble Supreme Court has held as under:*

"5. We have heard learned counsel for the respective parties at length.

At the outset, it is required to be noted that in the present case, the Industrial Court has directed the Mahanagar Palika/Municipal Corporation to give appointment to the heirs of the employees on their superannuation/retirement as per judgment and award passed in Reference IT No. 51 of 1979. However, it is required to be noted that the said judgment and award was passed in the year 1981, at the time when the Municipal Council was in existence. That thereafter in the year 2003, the Municipal Council has been converted to Municipal Corporation/Mahanagar Palika and all the employees under Mahanagar Palika/Municipal Corporation are governed by the scheme/rules & regulations framed by the State Government, which does not provide for any appointment on compassionate grounds or the appointment to the heirs of the employees on their superannuation/retirement.

6. Even otherwise, it is required to be noted that in Reference (IT) No. 2/1993, which was at the instance of Mahanagar Palika on the notice of change in respect of demand of employment to the heirs of the employee as per Reference (IT) No. 51 of 1979, the Industrial Court vide judgment and award dated 21.02.2005 directed the appointment on compassionate grounds to the heirs of the deceased employees only. It was specifically observed by the Industrial Court that at the time of passing earlier award in Reference IT No. 51 of 1979, i.e., in the year 1979 the demand to provide the employment to

the legal heirs of the employees on their retirement/superannuation was reasonable, however, in the present situation the said demand does not appear to be good and reasonable. The Industrial Court further observed that, needless to say, now-a-days the unemployment problem is a very major problem and in spite of high qualifications the qualified persons are not getting jobs and they remain unemployed. While modifying the demand and directing to provide appointment on compassionate grounds to the legal heirs of the employees (on the death of the concerned employee), in judgment and award dated 21.02.2005 in Reference IT No. 2/1993, it was observed by the Industrial Court as under:

“It seems from the oral submissions of the parties that, at the time of passing earlier award in Ref. (IT) No. 51/1979 i.e., in the year 1979 the demand for providing the employment to the legal heir of employee was reasonable however in present situation the said demand does not appears to be good and reasonable. Needless to say, that nowadays the unemployment problems is very major. In spite of high qualifications, the qualified persons are not getting job and they are unemployed. In view of this demand there is no scope for qualified unemployed person to get the job in the establishment of the party no. 1, as the legal heirs of the employees will get the job in place of the employee working in the establishment of the party no. 1. Mr. Patil learned advocate for the party no. 1 rightly submitted that on the basis of this demand the legal heirs are claiming employment on attaining the majority and if the legal heir is minor at the time of superannuation and that too after 10 years also under such circumstances in my opinion also the demand of providing employment to the legal heirs does not appears to be proper.

It has sufficiently come on record through the oral evidence of the parties that as per this demand the employment has been claimed as of right and there is no scope for selection of proper candidate, even the guidelines of the government regarding Reservation could not be followed. It is pertinent to note here that, as per the government policy certain post in the establishment are reserved for back ward classes and on those post- employment is to be given to the candidate from reserve category however as there is no scope for employment to others, therefore, it is very difficult for the candidates from reserve category to get employment in the establishment of the party no. 1.

It has also come on record that, as per this demand the employment is being claimed for distant relative on the basis of adoption. True it is that the adoption can be made as per law and after adoption the adopted child because legal heir of that person however it seems from the various copies of documents placed before the Court that employment has been claimed for nephew on the basis of affidavit

saying that the nephew is taking care of that employee. Similarly, in another matter the employment is sought for adopted son by application dated 02.05.1997 and deed of adoption has been executed on 30.04.1997.

From these documents it can be said positively that the demand or providing employment to the legal heirs of the employees has been misused. Furthermore, nothing has been placed on record on behalf of the party no. 2 union that such practice is being continued in any other establishment. The witness of the party no. 2 union specifically asked about the however he could not brought any documentary evidence.

In my opinion also even though this demand was reasonable in 1979 however the same is certainly not reasonable and justified during present days and in the light of misuse of the demand it can be safely said that the party no. 1 is justified in seeking change in the demand in respect of providing the employment to the legal heirs of the employees on superannuation, invalidity or resignation, be now I am inclined to modify the demand and directing the party no. 1 to provide (1) employment to the legal heirs of the employees of Class-IV category working in health department only (2) to provide the employment to the legal heirs of all categories i.e. Class-I category to Class-IV category on compassionate ground as per government Resolutions and circulars at par with governments employees.”

In view of the above also, thereafter it was not open for the Industrial Court and/or even the High Court to direct the Mahanagar Palika/Municipal Corporation to provide appointment to the heirs of the employees on their retirement/superannuation, relying upon the judgment and award passed by the Industrial Court in Reference IT No. 51 of 1979.

7. *After the conversion of the Municipal Council to Municipal Corporation/Mahanagar Palika, the employees of the Mahanagar Palika/Municipal Corporation shall be governed by the scheme framed by the State Government and at par with the government employees. As per the recent decision of this Court in the case of Bheemesh alias Bheemappa (supra), the appointment on compassionate ground shall be as per the modified scheme. Therefore, the employees of the Mahanagar Palika/Municipal Corporation shall be governed by the scheme of the State Government at par with the government employees, which does not provide for appointment on compassionate grounds to the heirs of the employees on their retirement and/or superannuation.*

8. *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.”

*16. In view of the above, we do not find that the refusal by the Government Medical College, Chhatrapati Sambhajnagar to grant employment to the Petitioner, vide the impugned order dated 14.03.2024, could be termed as being erroneous. **This Writ Petition is therefore dismissed. Rule is discharged.**”*

6. A perusal of the above quoted portion of the said judgment and order shows that this Court specifically found that the father of the Petitioner being a Safai Kamgar is still in employment. Thereupon, this Court applied the ratio of the judgment of the Supreme Court in the case of Ahmednagar Mahanagarpalika V/s. Ahmednagar Mahanagarpalika Kamgar

Union; 2022 III CLR 859, to hold that in the facts of the present case the Govt. Medical College & Hospital, Ch. Sambhajinagar correctly refused to grant employment to the Petitioner as a Safai Kamgar. We do not find any error apparent on the face of record. In any case, the order of the Tribunal cannot be binding on this Court and therefore, no case is made out by the Petitioner to seek review of the said judgment and order.

7. Accordingly, the review petition is dismissed.

[Y.G. KHOBRADE, J.]

[MANISH PITALE, J.]