



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

WRIT PETITION NO. 2430 OF 2018

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| <p>1. The Secretary,
Government of Maharashtra,
Public Works Department, Mantralaya,
Mumbai</p> <p>2. The Executive Engineer
Public Works Department, Ahmednagar
Nagar Aurangabad Road, Ahmednagar</p> | .. | <p>Petitioners
(Original Respondents
No.1 and 3)</p> |
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Versus

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| <p>1. Asha Rangnath Karale
Age Major, Occu. Nil,</p> <p>2. Shri. Manoj Rangnath Karale
Age Major, Occu. Nil,
Both R/o. Mauli Nagar (Lekhanagar)
Dhawan Vasti, Near Raskar Welding
Pipeline Road, Ahmednagar</p> <p>3. Usha Satish Kalamkar
Age Major, Occu. Nil,
R/o. Kavijang Nagar, Kachwala Bangla
Gulmohar Road, Ahmednagar</p> <p>4. Jyoti Sukhadev Kapade
Age Major, Occu. Service,
R/o. Vasant Tekadi, Aurangabad Road
Ahmednagar, Taluka and District
Ahmednagar</p> | .. | <p>Respondents</p> |
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[Respondents No.1 and 2 are original Complainant No.1 and 2 and Respondents No.3 and 4 are original respondents No.4 and 5 in complaint (ULP)]

Ms. M. N. Ghanekar, A.G.P. for Petitioners;
Mr. Parag V. Barde, Advocate for Respondents :

CORAM : SACHIN S. DESHMUKH, J.

DATE : 15-10-2025

ORDER:-

1. The petitioners have raised an exception to the judgment and order dated 02.02.2017 rendered by the learned Member, Industrial Court, Ahmednagar, in Complaint (ULP) No.48 of 2011, directing the petitioners (original respondents No.1 and 3) to take immediate steps (i) granting family pension to respondent No.1 (original complainant No.1), (ii) granting compassionate appointment to respondent No.2 (original complainant No.2).

2. Respondents No.1 and 2 filed complaint alleging unfair labour practice under item 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, "MRTU and PULP Act"), claiming pensionary benefit to respondent No.1 and employment to respondent No.2.

3. Respondents No.1 and 2 (complainants) are the legal heirs as widow and son, respectively, of deceased Rangnath Mahadu Karale, who died while in employment of Public Works Department (PWD), Ahmednagar, on 30.07.2007.

4. After death of Rangnath, Civil Application No.33 of 2008 was preferred by the daughters of first wife Gayabai of the deceased Rangnath, namely, Smt. Asha Rangnath Karale and Kum. Jyoti Rangnath Karale, in the Court of Joint Civil Judge Senior Division,

Ahmednagar, claiming succession certificate. In the said proceedings, complainant and respondent No.3 and 4 are declared as legal heirs and successors and were held to entitle to receive the gratuity and other service benefits to the extent of their respective shares. Accordingly, succession certificate was issued.

5. It is further the case of the petitioners that, first wife of deceased Rangnath, namely, Gayabai died on 10.08.2007. Thereafter, respondent No.1/ complainant - Asha claimed the pensionary benefits and also sought appointment on compassionate ground for respondent No.2 as he was only eligible for the said appointment. Upon denial, the complainant filed complaint (ULP) No.48 of 2011 before the Industrial Court, Ahmednagar alleging unfair labour practices under items 5, 9 and 10 of the MRTU and PULP Act.

6. The petitioners presented written statement and resisted the said complaint (ULP) stating that respondent No.1/complainant being second wife of deceased Rangnath was not entitled for pensionary benefit. The deceased being a Government employee, therefore, the complaint before the learned Industrial Court is not maintainable. Respondent No.1 ought to have presented the proceeding before the learned Maharashtra Administrative Tribunal ("MAT"). In view of Government Circular dated 03.11.2008 and as per the provisions of the Maharashtra Civil Services (Pension)

Rules, 1982. Hence, prayed to dismiss the complainant (ULP).

7. At this juncture, it would be appropriate to state that Complaint (ULP) No.115 of 2012 presented by respondents No.3 and 4 for seeking pensionary benefits and compassionate appointment is dismissed in default by the learned Industrial Court vide order dated 25.11.2015, on the ground of non appearance of complainant in the proceeding.

8. Learned Member, Industrial Court, Ahmednagar, allowed the complaint and directed the petitioners to initiate immediate steps for granting family pension to complainant No.1 and appointment on compassionate ground to complainant No.2. In paragraph No.24 of the judgment under challenge, it was noticed as under;

“24. The respondent nos.1 and 3 shall therefore take step to grant to the complainant no.1 pension on account of the services rendered by the deceased Rangnath Karale. The respondent nos.1 and 3 shall prepare the pension case for regular pension including arrears, and forward the same to the respondent No.2 for consideration and sanction. The respondent nos.1 and 3 are also required to appoint complainant no.2 in a post, which is suitable to his qualification. It is not clear as to what exactly is the procedure that is required to be followed for making such appointment. If there is waiting list or seniority list, the respondents nos.1 and 3 shall immediately enter the name of the complainant no.2 in such list. All steps shall be taken to see that the complainant no.2 gets the appointment as early as possible. As held by Hon’ble Supreme Court in Smt.Sushma Gosain and others vs. Union of India and others, 1989 (59) FLR, 626, there should not be any delay in making such appointments on compassionate ground. The required process shall be initiated immediately so that suitable appointment could be given to the complainant no.2 as early as

possible. The complainants have invoked Item nos.5 and 9 also, which however, do not come into play. ...”

9. Aggrieved by the order under challenge, the petitioner/State authorities have approached this Court, by presenting this petition under Article 227 of the Constitution of India.

10. Learned A.G.P. for the petitioners submits that the learned Member, Industrial Court has committed serious error of law in allowing the ULP (complaint) and not considered the fact that the Public Works Department is not an “Industry”. Therefore, the complaint (ULP) filed at the instance of complainant, was not maintainable. The deceased was the government employee, therefore, jurisdiction of granting of pension lies exclusively with Maharashtra Administrative Tribunal. Therefore, the Court below have not considered the provisions of Rule 115 of MCS (Pension) Rules, properly. Learned Member ought to have considered the fact that present respondents No.4 and 5 are legal heirs and legally entitled for the benefit of pension and compassionate appointment. The appointment on compassionate ground is granted by way of an immediate aid to the family of the deceased, however, the deceased Rangnath died on 30.07.2007 and complaint (ULP) is decided on 02.02.2017 i.e. after lapse of ten years period.

11. The learned A.G.P. for the petitioners submitted that

- (a) Public Works Department not an “industry” and the complaint under the MRTU & PULP Act is not maintainable;
- (b) Service matters of Government employees fall within the exclusive jurisdiction of the Maharashtra Administrative Tribunal (MAT). As such, the Industrial Court has committed jurisdictional error.
- (c) Respondent No.1 being second wife is not entitled to family pension under the MCS (Pension) Rules, 1982 and Government Circular dated 03.11.2008;
- (d) Compassionate appointment cannot be granted after ten years from the date of death;

Resultantly, prayed to allow the petition and dismiss the complaint.

12. Learned counsel for the respondents submits that respondent No.2 Rangnath Mahadu Kerale was in permanent service with PWD as a labour. He died on 30.07.2007. He had two wives, namely, Gayabai and Ashabai. Miscellaneous Civil Application No. 33 of 2008 was presented for succession certificate, in which Ashabai and Manoj were considered as successors of deceased Rangnath Karale. Complaint (ULP) No.115 of 2012 claiming compassionate appointment filed by Asha and Jyoti i.e. step sisters of Manoj is dismissed in default. Second wife Asha and Manoj filed complaint (ULP) No.48 of 2011, praying for

family pension and for grant of compassionate appointment to Manoj and their entitlement is upheld by the Industrial Court in accordance with law.

13. Learned counsel for the respondent has submitted that on attaining the age of majority within one year Manoj requested for compassionate appointment. Learned Industrial Court directed to grant family pension to Asha and compassionate appointment to Manoj.

14. The learned counsel for the respondents further submits that the issue of family pension is now no more *res integra*, in view of judgment in the case of *Kamalbai Nipanikar vs. State of Maharashtra, 2019(3) MLJ 921*, which unequivocally hold that the family pension cannot be claimed by the second wife as she is not legally wedded one (Ashabai is second wife), whereas the issue of compassionate appointment to the child from the second wife is governed in the wake of judgment in the case of ***Mukesh Kumar and another vs. Union of India, 2022(14) SCC 161***, wherein it is observed by the Honourable Apex Court that in case of compassionate appointment, discrimination cannot be made between the children on the ground of legitimacy.

15. The Honourable Apex Court, in the case of ***Mukesh Kumar*** (*supra*) observed in paragraph No.7 as under;

“7. This Court held that the scheme and the rules of

compassionate appointment cannot violate the mandate of Article 14 of the Constitution. Once Section 16 of the Hindu Marriage Act regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would violate Article 14, if the policy or rule excludes such a child from seeking the benefit of compassionate appointment. The circular creates two categories between one class, and it has no nexus to the objects sought to be achieved. Once the law has deemed them legitimate, it would be impermissible to exclude them from being considered under the policy. Exclusion of one class of legitimate children would fail to meet the test of nexus with the object, and it would defeat the purpose of ensuring the dignity of the family of the deceased employee. ...”

16. After having heard the learned counsel for the parties at length and perusing the record as well as considering the aforesaid statement of law, it is evident that the deceased was a permanent government employee, working in the Public Works Department, who died while in service on 30.07.2007. Respondent No.1 is his second wife and respondent No.2 is her son. They filed a ULP complaint seeking family pension and compassionate appointment. The deceased had two wives, the first wife, Gayabai (died on 23.07.2007), and the second wife Ashabai. The learned Industrial Court granted relief to the respondents based on their status as legal heirs and although same was objected by the petitioners' challenging jurisdiction and entitlement under the Maharashtra Civil Services (Pension) Rules, 1982, and the relevant government policy in vague.

17. A succession certificate in Miscellaneous Civil Application

No.33 of 2008 declared respondent Nos.1, 2, 3 and 4 as legal heirs for receiving debts and securities. The learned Industrial Court allowed the complaint and directed the grant of pension and compassionate appointment.

18. The entitlement to Family Pension under the Maharashtra Civil Services (Pension) Rules, 1982, and the government circulars, the family pension is payable to the "widow" of the deceased government employee. The second wife, Ashabai, was not a legally wedded wife at the time of the deceased's death, as the first wife, Gayabai was alive.

19. The position of law as regards the pensionary benefits is concerned, same is no longer *res integra*. The Full Bench of this Court in ***Kamalbai w/o Venkatrao Nipanikar vs. State of Maharashtra and others, 2019 (3) Mh.L.J. 921***, held that:-

"The second wife in general parlance would not be entitled for family pension unless she is legally wedded wife. A second wife who is not legally wedded wife would not be entitled for family pension under Rule 116 of the Pension Rules."

20. Following the principles in ***Kamalbai Venkatrao Nipanikar (supra)*** and various government instructions, the second wife's claim to the family pension is not legally tenable. Accordingly, family pension should be granted only to the lawful widow or legal

heirs holding succession certificate rights. The daughters of the first wife having succession certificates have a prior claim to the deceased's family pension benefits.

21. The Honourable Apex Court, in **Mukesh Kumar** (supra) has underscored the entitlement of child born out of second marriage, on the anvil of Article 14 of the Constitution of India, deeming as a legitimate child, therefore, exclusion from being considered under policy would be impermissible lends the support to the contentions of respondent to claim compassionate appointment.

22. As such, Manoj (respondent No.2), is entitled to compassionate appointment under the relevant government policies without discrimination on the grounds of legitimacy, as held by the Honourable Supreme Court, in the case of **Mukesh Kumar** (supra). The petitioners are directed to consider the compassionate appointment application of respondent No.2 as per procedure without undue delay, placing his name on the waiting or seniority list, if applicable.

23. In view of the above, the writ petition deserves to be partly allowed.

24. Hence, the following order:-

ORDER

(i) The writ petition is partly allowed.

- (ii) The judgment and order dated 02.02.2017 rendered by the learned Member, Industrial Court, Ahmednagar, in Complaint (ULP) No.48 of 2011, is quashed and set aside to the extent it directs to grant family pension to respondent No.1 (second wife Ashabai).
- (iii) The direction to provide compassionate appointment to respondent No.2 (Manoj) is upheld and endorsed that the petitioners shall take immediate steps to appoint respondent No.2 as per the applicable government compassionate appointment rules, considering his eligibility, qualifications, and seniority.
- (iv) The petitioners shall complete the process for compassionate appointment within four months from the date of this order.
- (v) No order as to costs.

[SACHIN S. DESHMUKH, J.]

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