



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1344 OF 2022

Ghanshyam S/o. Ashok Shinde,
Aged about 33 years, Occ.-Labour.
R/o. Sudarshan Nagar, Pusad,
Tah. Pusad, District Yavatmal.

.... **PETITIONER**

// **VERSUS** //

- 1) Superintending Engineer,
Irrigation Circle, Yavatmal,
District – Yavatmal.
- 2) The Collector, Yavatmal,
District – Yavatmal.
- 3) The Secretary, Irrigation and Water
Supply Department, Mantralaya,
Mumbai-32

.... **RESPONDENTS**

Mr. K. S. Narwade, Advocate for the Petitioner.
Mr. T. M. Zaheer, Advocate for respondent No.1.
Mr. H. D. Futane, Assistant Government Pleader for respondent
Nos.2 and 3.

CORAM : SMT. M.S. JAWALKAR, J.
DATE : 26th FEBRUARY, 2025.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.
2. By this petition the petitioner is challenging the judgment and order dated 04.01.2019, passed by the learned Member, Industrial Court, Yavatmal in Complaint (ULP) No.2/2015.

3. It is contention of the petitioner that his father was in an employment of the Irrigation Circle, Yavatmal. He expired on 30.04.1999, while in service. Mother of the petitioner applied for appointment on compassionate ground. It appear that the mother of the petitioner was called for an interview vide letter dated 22.11.2007, however, she has shown inability on the ground of illness. The petitioner as well as her mother filed an application for substitution of name of his son/petitioner to be appointed on compassionate ground. Accordingly, proposal of the petitioner for approval was forwarded to the Collector, Yavatmal for inclusion of his name in waiting list for appointment on compassionate ground. However, the Collector, Yavatmal refused approval to include the name of the petitioner in waiting list vide letter dated 31.10.2014 on the ground that there is no provision to substitute the name of other member in the waiting list. The another reason mentioned in the reply that the application was not moved by the petitioner within a period of one year of his attaining the age of majority.

4. It is admitted fact that the petitioner's name was included in the waiting list prepared for the period from 2008 to 2014 at Serial No.8. However, in view of a communication dated 31.10.2014 by the Collector Yavatmal, name of the petitioner was removed on above referred grounds from the waiting list on 01.12.2014.

5. Learned Counsel for the respondents vehemently opposed the application on the ground that it is not maintainable in view of Section 26 of the Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practices Act, 1971 (for short the “MRTU & ULP Act”).

6. The learned Counsel for the petitioner relied on the Full Bench judgment of this Court in ***Kalpna wd/o Vilas Taram and Anr. Vs. State of Maharashtra and Ors.***, reported in ***2024(4) Mh.L.J. (F.B.) 312***, wherein the Full Bench of this Court answered the reference as follows :

<i>Sr. No.</i>	<i>Question</i>	<i>Answer</i>
<i>(i)</i>	<i>.....</i>	<i>.....</i>
<i>(ii)</i>	<i>Whether the policies of the State, which provide for creating a wait list of the candidates for compassionate appointment and in cases permits substitution, even on account of crossing a particular age limit of 45 years is contrary to the object and purpose for which a compassionate appointment has to be granted?</i>	<i>a) Maintaining a wait list of the candidates for compassionate appointment is not contrary to the object and purpose for which a compassionate appointment has to be granted.</i> <i>b) Seeking substitution of the name of another member in place of a 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 must be granted.</i>

7. In para 23 of the said judgment, it is specifically observed that, “Thus, it is evident that, if a family member of the

deceased/incapacitated employee applied 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”.

In view of the guidelines issued by State also, the Head of Administrative Department is empowered to condone the delay up to two years after the laps of period of one year.

8. So far as objection of respondent is concerned, that the complaint before the learned Industrial Court is not maintainable, there is no such objection raised before the learned Industrial Court. There is specific averments in the complaint that the petitioner/applicant is a member of Maharashtra Rajya Kamgar Kalyan Sanghatna – applicant No.2 in the complaint, his father was also a member, not only this, the mother is also a member of said association. The said association is applicant No.2 in the complaint filed before the learned Industrial Court. In view thereof, the objection raised is not having any substance.

9. On perusal of Schedule-IV, Clause-9 of the MRTU & ULP Act, which shows that “failure to implement award, settlement or agreement” amounts to unfair labour practice. The learned Counsel for the petitioner submitted that the action of the respondent is contrary to the Government Resolution amounts to unfair labour practice.

He relied on *Chief Officer, Shirdi Municipal Council Vs. Director, Directorate of Municipal Administration, Mumbai and Anr.*, reported in *2016(3) Mh.L.J. 340*, wherein the order of the Industrial Court is confirmed by this Court on the ground that the action of the petitioners therein is contrary to the Government Resolution dated 01.08.2006. The Industrial Court in his order declared that respondent have engaged in unfair labour practice under Item 5, 9 and 10 of Schedule-IV of the MRTU & ULP Act. As such, there is no substance in objection raised. Moreover, the Government Resolution was under consideration in Full Bench judgment of this Court in reference of *Kalpana wd/o Viklas Taram* (supra). In view of the answered to the reference, such substitution of defendant is permissible and he has to be included in place of substituted defendant. There is no question of any delay in filing of application as it is not a fresh application, even it is the administrative department has power to condone the delay. It is a matter on record since 2008 to 2014 that the petitioner's name was included in the seniority list maintained for the purposes of appointment of compassionate ground. As such the petition is squarely covered by the judgment in *Kalpana wd/o Viklas Taram* (supra) by Full Bench of this Court and it deserves to be allowed.

10. In view of that, the writ petition is **allowed**.

11. The order passed by the learned Industrial Court, Yavatmal in Complaint (ULP) No. 02/2015, dated 04.01.2019 is hereby quashed and set aside.

12. The respondents are hereby directed to substitute the name of petitioner in place of his mother as it was included earlier for the year 2008 to 2014 and his name be considered as per his seniority.

13. The Writ Petition stands **disposed of** in the above terms. No costs.

(SMT. M.S. JAWALKAR, J.)

Kirtak