

(2024) 03 BOM CK 0026
In the Bombay High Court
Case No : Writ Petition No. 2208 Of 2024

Asad Abdulrahim Sayyad

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 07-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 14, 15

Citation : (2024) 03 BOM CK 0026

Hon'ble Judges : Ravindra V. Ghuge, J; R. M. Joshi, J

Bench : Division Bench

Advocate : R. A. Shinde, R. S. Wani

Final Decision : Dismissed

Judgement

R. M. Joshi, J

1. By consent of both sides, heard finally at the stage of admission.
2. This Petition is filed for seeking direction to Respondent Nos. 3 and 4 to issue compassionate appointment to the Petitioner in view of application and proposal forwarded by Respondent No. 4 to Respondent no. 3 on 02.02.2019, on any suitable and available post as per educational qualification of the Petitioner.
3. Father of the Petitioner was appointed in the services of Aurangabad Regional Electricity Board, Public Works Department, Aurangabad on 06.07.1967. He was permanent employee and was working on the post of Naik. He was in service till 30.01.2004. It is the claim of the Petitioner that his father was not getting well and was hospitalized and unfortunately died on 06.02.2004. After the death of the father of the Petitioner, the wife of the deceased had filed application before Civil Court, Aurangabad bearing MARJI No. 455/2004 for getting succession certificate. By order dated 15.09.2006 succession certificate was granted. It is his further contention that another suit came to be filed bearing RCS No. 490/2005 by second wife of deceased, which was disposed of on 22.08.2006. Subsequently, internal dispute between the parties was resolved and for getting

the compassionate appointment, applications were made with Respondent Nos. 3 and 4. He further claims that in response to the application/representation filed by the Petitioner Executive Engineer, PWD vide letter dated 19.01.2019 directed the Petitioner to submit necessary documents along with application in prescribed form so as to enable him to forward the proposal for appointment of the Petitioner. The said proposal was forwarded on 02.02.2019 by Authority but failed to issue the compassionate appointment.

4. Learned Counsel for the Petitioner submits that the documentary evidence placed on record clearly indicates about all compliances being done by the Petitioner for getting compassionate appointment and as such, it is a fit case to direct the Respondents to appoint the Petitioner on suitable post on compassionate appointment. He claims that father of Petitioner was admitted in hospital and was in employment on the date of his death on 06.02.2004. Learned Counsel for the Petitioner has placed reliance on the judgment of Hon'ble Apex Court in case of *Malaya Nanda Sethy V. State of Orissa*, AIR 2022 SC 2836 to argue that the mere delay on the part of the Petitioner to file an application for compassionate appointment, the same cannot be denied if there are sufficient reasons/explanation for not preferring the same earlier.

5. Learned AGP opposed the Petition by contending that the Petitioner is putting forth half-truth. His deceased father had superannuated on 31.01.2004. His death occurred after his superannuation. To support his submissions, he placed reliance on Office Order/08/2003-04, which is taken on record and marked 'X' for identification.

6. There cannot be any dispute about the fact that the father of the Petitioner superannuated on 31.01.2004 on the basis of order placed on record, genuineness of which is not in dispute. In such circumstances, the question arises before this Court as to whether there could be an order by this Court of compassionate appointment after the superannuation of the employee.

7. Petitioner may be justified in saying that owing to the disputes inter se between the parties i.e., between two wives of the deceased, no application was filed for compassionate appointment and on that sole ground his case may not be rejected. However, considering the judgment of the Hon'ble Apex Court in case of *Ahmednagar Mahanagar Palika versus Ahmednagar Mahanagar Palika Kamgar Union*, Civil Appeal No. 5944/2022 compassionate appointment cannot be granted after the superannuation of the employee. In this regard, it would be relevant to consider the observations of the Hon'ble Supreme Court in paragraph

8 of the judgment which reads thus:

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.

8. The dictum of the Supreme Court on the subject is absolutely clear and as such, Petitioner would have no right to claim compassionate appointment after superannuation of his father. In any case, there is nothing on record to indicate that the service conditions of the deceased provide for compassionate appointment even after his superannuation, to take any different view.

9. In view of the above discussion, Petitioner has failed to make out any case for issuing any direction to Respondents for compassionate appointment of the Petitioner. In the result, this Writ Petition stands dismissed.