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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1706 OF 2021

Durgadas s/o. Sunil Saindane .. Petitioner

Versus

1. The State of Maharashtra .. Respondents
Through its Secretary,
General Government Department,
Hutatma Rajguru Chowk,
Madam Kama Road,
Mantralaya, Mumbai – 400 032.
2. The Commissioner,
Municipal Corporation, Jalgaon,
Tq. & Dist. Jalgaon.

Mr.Yogesh Jadhav h/f. Mr. Girish Nagori, Advocate for the Petitioner.
Mr.S.K. Tambe, AGP for Respondent No.1.
Mr.L.V. Sangit, Advocate for Respondent No.2.

CORAM : RAVINDRA V. GHUGE &
R.M. JOSHI, JJ.
DATED : 28.03.2024

ORAL JUDGMENT [PER : RAVINDRA V. GHUGE, J.] :-

01. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

02. By this Petition, the Petitioner, who is around 30 years of age, has putforth prayer clauses (B), (C) and (D), which read as under :-

- “B) By issuing appropriate writ or direction, direct in the like nature, be pleased to quash and set aside the rejection communication dated 15.04.2017 issued by the respondent no.2/Municipal Corporation Jalgaon against the present petitioner.
- C) By issuing appropriate writ or direction, direct in the like nature the respondent no.2 be directed to decide the representation dated 08.10.2018 given by the petitioner, as expeditiously as possible, within 4 weeks from today.
- D) Be pleased to direct the respondent no.2 to add the name of petitioner in the final list of compassionate appointment waiting list.”

03. We have considered the submissions of the learned Advocates for the respective sides and have gone through the Petition paper-book with their assistance.

04. The Petitioner’s father passed away on 27.02.2012. The widow applied for compassionate appointment when she was less than 45 years of

age. Her name was enlisted in the list of eligible candidates and she was awaiting compassionate appointment. In the meanwhile, she completed 45 years of age and presently she is said to be around 55-56 years of age. Even if this Court was to grant compassionate appointment to the widow, being a class IV employee, she would retire at the age of 60 after putting in around 4-5 years in employment. She would not even be entitled for pension and the moment she gets compassionate appointment, present pension payable on account of the deceased husband's service, would also stop. It is in this backdrop, that we are considering the claim of the present petitioner.

05. After considering the strenuous submissions of the parties, we find that none of them are aware of the Central Government's policy titled as "Scheme For Compassionate Appointment Under Central Government" dated 02.08.2022. It is undisputed that the said scheme was adopted by the State of Maharashtra. Clauses 7A and 7B of the said Scheme read as under :-

"7A. EXEMPTIONS

- Compassionate appointments are exempted from observance of the following requirements:-
- (a) Recruitment procedure i.e. without the agency of the Staff Selection Commission or the Employment Exchange.
 - (b) Clearance from the Surplus Cell of the Department of Personnel and Training/ Directorate General of Employment and Training.
 - (c) The ban orders on filling up of posts issued by the Ministry of

Finance (Department of Expenditure).

[Para 6 A of DOPT O.M. No. 14014/6/94-Estt. (D) dated 09.10.1998)

7B. RELAXATIONS

- (a) Upper age limit could be relaxed wherever found to be necessary. The lower age limit should, however, in no case be relaxed below 18 years of age.

Note I Age eligibility shall be determined with reference to the date of application and not the date of appointment;

Note II Authority competent to take a final decision for making compassionate appointment in a case shall be competent to grant relaxation of upper age limit also for making such appointment.

[Para 6 B of DOPT OM. No. 14014/6/94- Estt. (D) dated 09.10.1998]

- (b) In exceptional circumstances Government may consider recruiting persons not immediately meeting the minimum educational standards. Government may engage them as trainees who will be given the regular pay bands and grade pay only on acquiring the minimum qualification prescribed under the recruitment rules. The emoluments of these trainees, during the period of their training and before they are absorbed in the Government as employees, will be equal to the lowest/ first cell (minimum) of Pay Level-1 Rs. 18,000-56,900 (pre-revised -1S pay band). In addition, they will be granted all applicable Allowance, like Dearness Allowances, House Rent Allowance and Transport Allowance at the admissible rates. The same shall be calculated on the minimum of Pay Level-1. The period spent in Pay Level-1 by the future recruits will not be counted as service for any purpose as their regular service will start only after they are appointed in the Group 'C' post after acquiring minimum educational qualifications. The pay of those governed by the 1S scale under 6th CPC Pay Rules may be revised by using the Fitment Factor of 2.57 for placement in Level-1 in conformity with the Rule 7 of the CCS (RP) Rules, 2016. All pre-revised pay stages lower than pre-revised pay of Rs.7,000 in the pre-revised IS scale shall not be considered for determining the benefit of bunching, on the same lines as has been clarified by Department of Expenditure's O.M dated 03.08.2017 on application of the benefit on account of bunching. This will be effective from 01.01.2016.

[Para 1 of O.M. No.14014/2/2009-Estt.
(D) dated 11.12.2009 and

Para 2 of O.M. No.14014/2/2009-Estt. (D) dated 09.10.2017]

Note:- In the case of an attached/ subordinate office, the Secretary in the concerned administrative Ministry/ Department shall be the competent authority for this purpose.

- (c) In the matter of exemption from the requirement of passing the typing test those appointed on compassionate grounds to the post of Lower Division Clerk will be governed by the general orders issued in this regard:-
- (i) by the CS Division of the Department of Personnel and Training if the post is included in the Central Secretariat Clerical Service; or
- (ii) by the Establishment Division of the Department of Personnel and Training if the post is not included in the Central Secretariat Clerical Service.

[Para 6 of DOPT O.M. No. 14014/6/94-Estt. (D) dated 09.10.1998]

- (d) In case of appointment of a widow not fulfilling the requirement of educational qualification, against the post of MULTI TASKING STAFF, she will be placed in minimum of Pay Level-1 (Rs. 18,000-56,900) directly without insisting on fulfillment of educational qualification norms, provided the appointing authority is satisfied that the duties of the post against which she is being appointed can be performed with help of some on job training. This dispensation is to be allowed for appointment on compassionate ground against the post of MULTI TASKING STAFF only.

[Para 2 of O.M. No. 14014/2/2009-Estt. (D) dated 03.04.2012]"

06. This Policy was brought to our notice by the learned Advocate who conducted **Writ Petition No.12897 of 2023 [Latikabai Uttam Mahajan Vs. The State of Maharashtra and Others]**, decided vide our order dated 21.12.2023. We have concluded in the said judgment that the Central scheme clearly indicates that even if an eligible candidate who is enlisted/wait listed for compassionate appointment, becomes age barred while awaiting such

employment, meaning thereby that the candidate crosses the age of 45 years, the name of such candidate is not to be deleted or de-listed. Whenever, the turn of such candidate arises as per the wait list, the candidate has to be given compassionate appointment. However, we are not applying the said law to this case before us since the widow is almost about 55-56 years of age and it would be purposeless to grant her compassionate appointment for 4-5 years, because she would not be entitled for any service or retiral benefits.

07. The learned Advocate for the Corporation has stressed on the averments set out in the Affidavit-in-reply dated 12.02.2024. It is obvious from the pleadings that the Corporation is considering the candidature of the Petitioner as a new Applicant and, therefore, the issue of delay is being raised on the ground that the Petitioner was not 18 years of age and an Application to substitute/replace the name of the mother with the name of the Petitioner was tendered only after he became 18 years of age. We are afraid that the Corporation has not putforth a justifiable reason. The request of the Petitioner cannot be said to be new or delayed as if he is applying as a stand alone candidate. The widow had moved an Application after she crossed 45 years to request that the son may be given an appointment. She was under the belief

that after turning 45, she did not have a right to seek compassionate appointment. Though the Petitioner's mother is eligible even today, we are exercising our extraordinary jurisdiction to replace her name with the name of the Petitioner, since the mother would be getting hardly 4-5 years as a compassionate appointee and would not be eligible for retiral benefits.

08. In view of the above, **this Petition is partly allowed**. The name of the Petitioner shall be entered in place of the name of his mother at the same serial number in the wait list. As soon as the turn of the Petitioner arises, the Petitioner would be granted compassionate appointment. If it is noticed that the Corporation has overlooked the Petitioner and granted appointment on compassionate basis to candidates who are below the serial number of the Petitioner's mother (at which serial number the Petitioner's name would now figure), it would amount to disobeying the orders of this Court. In the event any person below the serial number of the Petitioner's mother has been granted compassionate appointment as on date, the Petitioner would be the next candidate to be considered for such appointment.

09. We clarify that the above order is passed in the peculiar facts and circumstances of this case.

10. **Rule is made partly absolute in the above terms.**

[R.M. JOSHI,J.]

[RAVINDRA V. GHUGE,J.]