

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6750 OF 2022

Om

...Petitioner

-Versus-

1. The State of Maharashtra.
Through it's Principal Secretary,
Department of Rural Development,
Mantralaya, Mumbai-32.
2. Chief Executive Officer,
Zilla Parishad, Nanded,
Tq. and Dist. Nanded.

...Respondents

AND

WRIT PETITION NO. 6771 OF 2022

Shital

...Petitioner

-Versus-

1. The State of Maharashtra.
Through it's Principal Secretary,
Department of Rural Development,
Mantralaya, Mumbai-32.

2. Chief Executive Officer,
Zilla Parishad, Nanded,
Tq. and Dist. Nanded.
3. District Program Officer (ICDS),
Zilla Parishad, Nanded,
Tq. & Dist. Nanded.

...Respondents

...
Mr. C.R. Thorat, Advocate for the petitioners.
Mr. Mahesh S. Deshmukh, Advocate assisted the Court.
Mr. P.S. Patil, Additional Government Pleader, for respondent
No.1/State.
Mrs. Yogita S. Thorat, Advocate for respondent Nos.2 and 3/Zilla
Parishad.

...
**CORAM : DIPANKAR DATTA, CJ,
RAVINDRA V. GHUGE &
SMT. VIBHA KANKANWADI, JJ.**

***Reserved on :- 07th July, 2022
Pronounced on :- 22nd July, 2022***

JUDGMENT (Per Ravindra V. Ghuge, J.) :-

1. In Writ Petition No.6771/2022, the Division Bench
(coram : Chief Justice & Ravindra V. Ghuge, J.) passed an order
on 05.07.2022 as under: -

“1. *Having heard Mr. Thorat, learned advocate for the petitioner, Mr. Patil, learned Additional Government Pleader for the respondent no.1/State and Ms. Thorat, learned advocate for respondents 2 and 3/Zilla Parishad, we are of the view that the issue raised in this petition can be advantageously heard by a Bench of*

three judges.

2. *Let the file be placed before the Chief Justice for appropriate orders.”*

2. In view of the above, the Hon’ble the Chief Justice was pleased to constitute this Larger Bench and the writ petition was posted for hearing on 07.07.2022.

3. Writ Petition No.6750 of 2022 filed by the same advocate for the petitioner, was before the Division Bench on 06.07.2022. Considering the above order, the said petition was tagged along with Writ Petition No.6771 of 2022 and heard together on 07.07.2022.

4. In Writ Petition No.6750 of 2022, the petitioner has put forth prayer clause A as under: -

“A. *By issuing Writ of Mandamus or any other appropriate writ or direction in the like nature, the respondent no.2 may kindly be directed to not to insist to the petitioner, to submit the Tribe Validity Certificate, as his appointment is from the Compassionate Ground and not from the Scheduled Tribe category.”*

5. In Writ Petition No.6771 of 2022, the petitioner has put forth prayer clause A as under: -

“A. *By issuing Writ of Mandamus or any other appropriate writ or direction in the like nature, the respondent no.2 and 3 may kindly be directed to not to insist to the petitioner, to submit the Tribe Validity Certificate, as her*

appointment is from the Compassionate Ground and not from the Scheduled Tribe category.”

6. We have considered the strenuous submissions of the learned counsel.

7. During the course of hearing in the matters, the issue arising for consideration of the Larger Bench has been formulated by us as under: -

“Whether, a compassionate appointee, is not required to submit a caste/tribe validity certificate when the parent had secured employment, on the basis of a caste/tribe certificate, on a post which was specifically reserved for a backward category and who did not submit a validity certificate until his/her demise while in service?”

8. The learned advocate for the petitioners relied upon the following judgments: -

- a) Umesh Kumar Nagpal vs. State of Haryana and others, reported in (1994) 4 SCC 138.
- b) Balaji Sitaram More vs. The State of Maharashtra and others, Writ Petition No.501/2004 decided on 02.09.2015 by the Aurangabad Bench of this Court.
- c) Rekha Sayanna Totawar vs. The State of

Maharashtra and others, Writ Petition No.2131/2011 decided on 24.08.2011 by the Aurangabad Bench of this Court.

- d) Vinodkumar Singh Rajkumar Singh Thakur vs. State of Maharashtra and others, Writ Petition No.4185/2015 decided on 14.01.2016 by the Nagpur Bench of this Court.
- e) Smt. Sarita wd/o Vijay Giri vs. Divisional Caste Scrutiny Committee and another, Writ Petition No.43/2016 decided on 20.04.2016 by the Nagpur Bench of this Court.
- f) Rajesh Ravishankar Gupta vs. The Managing Director, MSEDCL and another, Writ Petition No.2174/2007 decided on 20.03.2017 by the Nagpur Bench of this Court.
- g) Chandrashekhkar Brijbahadur Yadav vs. State of Maharashtra and others, Writ Petition No.932/2013 decided on 04.01.2018 by the Nagpur Bench of this Court.
- h) Prashant Vistari Mallewar vs. The Chief Conservator of Forest and others, Writ Petition No.3927/2013 decided on 20.03.2017 by the Nagpur Bench of this

Court.

- i) Sanjay Lacchhana Bodewar vs. State of Maharashtra and others, Writ Petition No.6906/2015 decided on 04.10.2017 by the Nagpur Bench of this Court.
- j) Ajinkya Rajiv Khadatkar vs. Managing Director, MSEDCL and others, reported in 2019 (6) ALL MR 187.
- k) Pramod Shivaji Shinde vs. State of Maharashtra and others, reported in 2017 (4) ALL MR 279.
- l) Kailas Vasanttrao Shrote vs. The State of Maharashtra and another, Writ Petition No.7746/2020 decided on 11.12.2020 by the Aurangabad Bench of this Court.
- m) Savita Ashok Koli vs. The State of Maharashtra and others, Writ Petition No.9110/2021 decided on 01.04.2022 by the Aurangabad Bench of this Court.
- n) Sunita Late Pradip Thakar vs. The State of Maharashtra and others, Writ Petition No.6485/2020 decided on 20.07.2021 by the Aurangabad Bench of this Court.
- o) Deepak Madhukar Shukla vs. The Divisional Caste Scrutiny Committee and others, Writ Petition

No.1062/2016 decided 18.03.2016 by the Nagpur Bench of this Court.

- p) Mangal Manohar Salunke vs. The State of Maharashtra and others, Writ Petition (Stamp) No.12224/2020 decided on 23.07.2020 by the Aurangabad Bench of this Court.
- q) Sadhana Late Arjun Bagul vs. The State of Maharashtra and others, Writ Petition No.12938/2021 decided on 30.06.2022 by the Aurangabad Bench of this Court.

9. The learned AGP representing the State and the learned advocate representing the Zilla Parishad, relied upon the following judgments and the Government Resolutions: -

- a) Chairman and Managing Director, Food Corporation of India and others vs. Jagdish Balaram Bahira and others, reported in (2017) 8 SCC 670.
- b) Chandrabhan vs. State of Maharashtra and others, reported in (2021) 9 SCC 804.
- c) R. Vishwanatha Pillai with Vimal Ghosh vs. State of Kerala, reported in (2004) 2 SCC 105.
- d) Vijay Kishanrao Kurundkar vs. State of Maharashtra

and others, 2020 SCC Online SC 834.

- e) Circular No.SRV-1097/F.No.81/98/16-A dated 16.03.1999 issued by the General Administration Department, Government of Maharashtra.
- f) Government Order No.BCC 2011/F.No.1064/2011/16-B dated 12.12.2011 issued by the General Administration Department, Government of Maharashtra.
- g) Government Order No. Compensate 1217/F.No. 102/ Eight dated 21.09.2017 issued by the General Administration Department, Government of Maharashtra.
- h) Government Circular No. Akampa-1221/Pra.Kra. 186/ Ka-8 dated 26.08.2021 issued by the General Administration Department, Government of Maharashtra.
- i) Government Resolution No.Akampa-1084/189/ CR-155/ Tera-A dated 08.03.1985 issued by the General Administration Department, Government of Maharashtra.

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10. In the first petition, the petitioner's father died while in service on 03.11.2013. He was employed as a Junior Assistant. Undisputedly, his appointment was on the said post reserved for the Scheduled Tribe category. His entry in service was purely on account of his claim of belonging to the Munnervarlu-Scheduled Tribe and he produced his tribe certificate as a primary evidence to support his claim. His service book, undisputedly, contained such entry.

11. When the petitioner-Om Bhagwanrao Anjanwad was issued the appointment order dated 29.11.2019, it was specifically mentioned therein that he is appointed on compassionate ground in view of the demise of his father and the said post of Assistant Engineer (Class-III) was reserved for the Scheduled Tribe category. It was also specifically ordered that he would submit his tribe validity certificate within six months from the date of his joining. His proposal for validation would be forwarded as soon as he joined employment. If he failed to submit the tribe validity certificate, he would be relieved from employment by efflux of time.

Writ Petition No. 6771 of 2022

12. In the second petition, the petitioner's father was working as a Teacher with the Zilla Parishad. He had entered employment as a Teacher on the basis of his claim that he belonged to the Munnervarlu-Scheduled Tribe. He secured employment only because he belonged to the Scheduled Tribe and he produced his tribe certificate. Based on such selection and appointment, an entry was made in his service book. He died while in service on 01.06.2012.

13. The petitioner Shital d/o deceased Govindrao Bainwad was appointed as a Supervisor in the Integrated Child Development Project vide appointment order dated 11.12.2020. The said post was reserved for the Scheduled Tribe. It was specifically set out, amongst other conditions of service, that she will have to submit her tribe validity certificate within six months from the date of joining. If she failed to submit a tribe validity certificate, she would be relieved from employment by efflux of time. It is on these conditions that she accepted the appointment order.

SUBMISSIONS

14. Shri Deshmukh, learned Advocate volunteered to assist the Court. While canvassing his submissions, he contended that if a person secures an appointment to a post, which is specifically reserved for a Scheduled Category, such candidate is legally obliged to submit a validity certificate. If for any reason the validity certificate is not tendered and the candidate dies in harness, his legal heir who secures compassionate employment is duty bound to tender his/her validity certificate.

15. Shri Thorat, learned advocate for the petitioners, has canvassed that though the fathers of both these petitioners gained entry in service only because the posts were reserved for a backward category, the compassionate appointment of both these petitioners were not made against reserved posts and hence, they are not required to submit their validity certificates. A compassionate appointment is a special category and no reservation is applicable. Notwithstanding that the deceased fathers of both these petitioners did not receive any validity certificate and they passed away without tendering their validity certificates, the petitioners cannot be directed to produce their

validity certificates. He relies upon *Ajinkya Khadatkar (supra)* to support his contention that the Division Bench of this Court concluded that the petitioner was not appointed under any reserved category and hence, no validity certificate was required to be tendered.

16. We find from *Ajinkya Khadatkar (supra)* that the Division Bench of this Court had dealt with purely a submission that the petitioner was not appointed against any reserved post and it was canvassed that the reservation policy would not be applicable to compassionate appointments.

17. The petitioners have relied upon *Pramod Shivaji Shinde (supra)*. The Division Bench, of which one of us (Ravindra V. Ghuge, J.) was a member, had noticed from the facts of that case that the petitioner was appointed on compassionate basis because his father had died in a vehicular accident while being in service of the Maharashtra State Road Transport Corporation. The appointment of the petitioner was made on the post of a bus conductor which was not the post occupied by his father, though he was appointed on compassionate basis due to the demise of his father.

18. The petitioners have then relied upon *Savita Ashok Koli (supra)*, which was delivered by the Division Bench of

which again one of us (Ravindra V. Ghuge, J.) was a member. In the said decision, it was specifically noted by the Division Bench that it had doubts about the contention of the employer, in the absence of any judicial pronouncement, that the petitioner would have to produce a validity certificate as, by her compassionate appointment, she stepped into the shoes of her father. Her father's entry in employment was purely on account of the post being reserved for a backward category and he claimed to belong to such a category. Moreover, the employer of Savita Koli had woken up after 17 years knowing fully well that her validation claim of belonging to Tokre Koli Tribe was already invalidated in March, 2004.

19. The petitioners then relied upon *Vinodkumar Singh (supra)* wherein the Division Bench was dealing with a challenge by the petitioner/applicant to the direction of the Tribunal issued to the employer to forward the proposal of the petitioner to the Caste Scrutiny Committee. The Division Bench allowed the petition on the ground that Vinodkumar Singh was appointed as a constable in 2005 and there was nothing placed on record to indicate that his appointment on compassionate basis was by following the reservation policy.

20. The learned advocate for the petitioners has then

relied upon *Sanjay Bodewar (supra)*, *Deepak Madhukar Shukla (supra)*, *Mangal Manohar Salunke (supra)* and *Sadhana Arjun Bagul (supra)*, wherein, similar views taken, by relying upon the earlier orders, cited.

21. The learned advocate for the Zilla Parishad has canvassed that compassionate appointment cannot be claimed as a matter of right and it is not a mode of recruitment. The reservation policy would not be made applicable to compassionate appointments as such appointments do not form a separate class. Once the bread earner dies in harness or is incapacitated or is declared medically unfit, paving way to a legal heir being appointed on compassionate basis, a reservation policy may or may not be made applicable, because such appointments are not a mode of recruitment. Nevertheless, if such bread earner had secured employment on the basis of a claim of belonging to a reserved category and such employee was duty bound to submit his validity certificate so as to legalize his selection and appointment, the death of such an employee would not exclude his post from reservation. The said post would not be converted into an open category post merely because the employee died before submitting his caste validity certificate. Moreover, when the compassionate appointee has secured

employment since the father succeeded in gaining such appointment on the basis of a reserved caste, the obligation of the father of submitting a caste validity certificate would bind even a compassionate appointee who would be equally obliged to submit a caste validity certificate.

ANALYSIS AND CONCLUSIONS

22. We have noticed two orders passed by the Division Bench of this Court at the Principal Seat, dated 18.10.2016 delivered in Writ Petition No.2687/2014 filed by ***Shashikant Bhagawant Dhale vs. The State of Maharashtra and others*** and dated 24.10.2016 passed in Writ Petition No.6177/2016 in ***Sudarshan Virswami Chenna vs. Divisional Caste Scrutiny Committee and another***, which have not been cited before us. We are considering these two orders, which are based on the view taken in ***Vinodkumar Singh (supra)***.

23. In ***Shashikant Dhale (supra)***, the father of the petitioner was declared medically unfit. Shashikant was appointed on compassionate basis in his place. The appointment order did not indicate that he was appointed on a reserved category post. Relying upon ***Vinodkumar Singh (supra)***, it was

concluded that once the appointment order was made on compassionate ground and no reservation policy is made applicable, the compassionate appointee is not required to submit a validity certificate. In *Sudarshan Chenna (supra)*, the claim of Sudarshan was invalidated on 22.01.2016. He was appointed as a talathi on compassionate ground on 16.10.2000. It was not indicated that he was appointed on a reserved post. Once again reliance was placed on *Vinodkumar Singh (supra)* and the same view was followed.

24. It is, thus, apparent that in all the judgments/orders referred to above, the issue that we have framed below paragraph 7, was never addressed to the Court. All along, since it has been canvassed in the cited reports that the compassionate appointment order did not mention that the appointee was being inducted in service on the reserved post by virtue of the reserved post occupied by his father, that the various Division Benches of this Court have held that the facts in those cases do not indicate as to whether, the reservation was made applicable to the case of the compassionate appointee.

25. We have cast the issue in paragraph 7 in the light of the submission that the foundation of compassionate appointment lays on the fact of the parent's entry in employment. Whether, the

compassionate appointee, whose basis of entry in employment is his parent's entry in employment, would mandate such an employee to submit a validity certificate after the father had secured employment on a post reserved for a backward category. Such issue, we do not find, was addressed to the Courts, which passed the earlier orders. This issue was also not raised in *Pramod Shivaji Shinde (supra)*, *Sunita Thakar (supra)*, *Umeshkumar Nagpal (supra)*, *Balaji More (supra)* and also in *Rekha Sayanna Totawar (supra)*, which is the earliest judgment of the Division Bench of this Court delivered at Aurangabad on 24.08.2011. In *Savita Koli (supra)*, the Division Bench expressed its doubts about the requirement of a validity certificate by a compassionate appointee, whose entry in service was on the basis of his father's entry in employment on a post reserved for the backward category. Even in this case, the issue framed by us was not taken up for adjudication by the Division Bench.

26. Therefore, while considering the submissions advanced at the Bar by the learned counsel for the respective sides and on perusing the cited reports/orders, we need to consider as to, whether, the obligation of a deceased parent to justify his selection to a post reserved for a backward category by tendering a validity certificate, would stand nullified after his

death and hence, whether, the compassionate appointee will be absolved from tendering a validity certificate. This was never addressed to the Division Bench of this Court and even not before the Hon'ble Supreme Court.

27. The Division Bench observed in paragraph 7 in ***Savita Ashok Koli (supra)*** as under: -

“7. We are aware that if the deceased father/mother of a candidate entered service solely on the ground of belonging to a particular reserved/tribe and because the post was reserved for such a backward category, there could be an argument that the legal heir of such a deceased employee, in the absence of the deceased employee having produced any validity certificate until his premature death, may require such a candidate to produce a validity certificate. Though we have our doubts with regard to such contention in the absence of any judicial pronouncement, the fact situation in this case remains that there is no mention or statement in the appointment order of the petitioner indicating that she has succeeded in getting a compassionate appointment only because she belongs to a backward category and the post was reserved for such a particular category.”

28. In ***Savita Koli (supra)***, the appointment order issued to the compassionate appointee did not mention that she was being appointed in place of her father, who was a police constable. The compassionate appointee was appointed as a steno-typist on compassionate basis, temporarily. She was not

intimated that she would have to submit her validity certificate. However, we are considering a larger issue that was neither directly addressed to the Court, nor specifically canvassed on the basis that the compassionate appointee was appointed in place of the parent.

29. This impels us to deal with the factum of the entry of the deceased parent in employment, which is the reason due to which the compassionate appointee entered service wholly and solely on the ground of the demise of the parent. Had such a parent not passed away, he would have been legally bound to tender a validity certificate, lest, all his service benefits including his employment, would have been taken away in the light of the law crystallized in *R. Vishwanatha Pillai (supra)*.

30. In paragraphs 69.3 and 69.4 of *Jagdish Balaram Bahira (supra)*, the Hon'ble Supreme Court has observed as under: -

“69.3 *The decisions of this Court in R. Vishwanatha Pillai and in Dattatray which were rendered by benches of three Judges laid down the principle of law that where a benefit is secured by an individual – such as an appointment to a post or admission to an educational institution – on the basis that the candidate belongs to a reserved category for which the benefit is reserved, the invalidation of the caste or tribe claim upon verification would result in the appointment or, as the case may be, the admission being rendered void or non est.*

69.4 *The exception to the above doctrine was in those*

cases where this Court exercised its power under Article 142 of the Constitution to render complete justice.”

31. So also, during the lifetime of the parent, had the compassionate appointee independently sought employment in Government service or in a public sector undertaking on a reserved post, he/she would have been legally bound to submit the caste validity certificate within six months of joining duties. If this be so, then, it would be illogical, nay illegal, to permit a compassionate appointee to continue in place of the deceased parent without tendering a validity certificate in the backdrop of the parent having passed away before submitting the validity certificate.

32. It cannot be ignored that a compassionate appointment is not a vested right. Similarly, the compassionate appointee does not have to compete with the candidates who have applied for employment in a recruitment process. One can venture into saying that the compassionate appointee gets a special treatment owing to fortuitous circumstances, which are surely tragic, as the family has lost the sole bread earner. It also cannot be ignored that unless the original appointee submits a validity certificate, his selection and appointment would never be

legalized as he is selected on a post reserved for the backward category. Whether, he factually belongs to the caste/tribe on the basis of which he has earned a job, will have to be scrutinized, lest, such selection would amount to an illegality and a worthy candidate belonging to that category would end-up in losing his opportunity of securing employment.

33. We have invariably found in several cases that such appointees, who have died in harness, had avoided filing their validity certificates for periods ranging from 10 years to 20 years. We can take judicial notice of cases coming before us wherein, retired candidates have filed petitions for seeking retiral benefits which have been withheld only because the appointee did not tender a validity certificate during his entire service period of about 30 or more years. There are schemes cited before us wherein, certain State instrumentalities permit compassionate appointments even upon superannuation of the appointee. Allowing a candidate to enjoy the fruits of employment earned on the basis of a claim of belonging to the reserved category without submitting such validity and permitting the legal heir to gain compassionate appointment only on account of the demise of the parent and that too without demanding a validity certificate, would amount to playing a fraud on the public at

large.

34. This issue can be looked at, from another angle as well. If the deceased employee had declared his social status of belonging to a reserved category on the basis of which he earned employment on a post reserved for that category, but died in harness without tendering a validity certificate, and his son or daughter, claiming to be belonging to the same category, acquires compassionate appointment, what could be the hurdle or embargo for such a candidate in submitting the validity certificate. When the deceased appointee as well as the compassionate appointee claim to be belonging to a particular backward category, we do not see any impediment for the compassionate appointee to tender a validity certificate unless, of course, the family members of the deceased know for sure that they do not belong to that particular category and, therefore, production of a validity certificate would never fructify.

35. It is beyond debate that the compassionate appointee lays stake to compassionate appointment only because the deceased parent was in employment. Such appointee can, therefore, submit a validity certificate to legalize such entry in employment which obligation was earlier cast upon the deceased parent. This obligation having not been discharged, would be

inherited by the compassionate appointee since such appointee seeks compassionate appointment only by virtue of the entry in service of the deceased parent.

36. We can also visualize a situation which has come to our notice in few cases. The employee finds that his caste/tribe claim is invalidated. He approaches this Court challenging such invalidation. During the pendency of his proceedings, he passes away. His son/daughter secures compassionate employment. In our view, even in such cases, such candidate would be legally obliged to tender a validity certificate.

37. In *Jagdish Balaram Bahira (supra)*, the Hon'ble Supreme Court concluded that, for a person seeking admission in an educational institution or an employment under a reserved category, based on the claim that he belongs to that category, the burden lies on him/her who made such claim on the basis of the caste certificate. Such a person is presumed to be aware of his caste/tribe to which he/she belongs and must establish the claim of belonging to such caste/tribe. A failure to do so, would render the claim (of belonging to such a caste/tribe) fraudulent under the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and

Verification of) Caste Certificate Act, 2000. The legislature has legitimately assumed that a person who seeks a caste certificate must surely be aware of the caste, tribe or class to which he/she belongs and must establish the claim. It is then held that Sections 7 and 10 have to be construed in harmony as Section 10 provides for withdrawal of civil benefits, which have accrued to an individual on the strength of his claim of belonging to a reserved category when the claim is invalidated. It is then concluded that the falsity of the claim lies in a representation that the candidate belongs to a category of persons for whom the reservation is intended. The withdrawal of benefits is not based on *mens rea* or the intent underlying the assertion of the false claim.

38. In *Jagdish Balaram Bahira (supra)*, the Hon'ble Supreme Court has also held that the withdrawal of civil benefits flowed as a logical result of the invalidation of a claim that a person belongs to a category for which the reservation is intended. This impels us to consider as to what could be the difference between the "invalidation of a claim" and a candidate "not establishing his claim". Though, invalidation of a claim would be indicative of a person being officially declared as not belonging to a particular category, the effect would be no different than a candidate not submitting his validity certificate

for decades, thereby rendering his claim of belonging to a category, seriously doubtful. The net result would be that a candidate without a validity certificate cannot claim to belong to a particular category and so is the case of a candidate who is declared as not belonging to that category owing to invalidation.

39. In our considered view, the submission of the validity certificate by a candidate having secured employment on the basis of reservation on a post reserved for the backward category would be a *sine qua non*. The procedure for selection and the prescription of the eligibility criteria has a significant public element in enabling the State to make a choice amongst the competing claims. The selection of an ineligible person is a manifestation of a systemic failure, which has a deleterious effect on good governance. If such candidates are permitted to occupy posts and evade submission of validity certificates for years or decades and after the unfortunate demise of such a person in harness, paving the way to compassionate appointment treating the post to be from the open category and redeem the compassionate appointee from the obligation of submitting the validity certificate, which his father was legally obliged to submit in order to legalize his appointment, would be detrimental to the entire class of persons for whom the reservations are

intended. Excluding such members or depriving a legitimate candidate of an appointment, as a result of the recruitment granted to an impostor would violate the rights of genuine candidates. We cannot permit the illegality to be perpetrated by absolving the compassionate appointee from tendering a validity certificate, which his father was legally obliged to tender.

40. We are of the view, based on *Jagdish Balaram Bahira (supra)*, that good governance would mandate that a compassionate appointee who gains entry in employment only on the basis of his father's appointment to a post reserved for a backward category, has to submit his validity certificate. To make such law effective, it would be imperative that the candidate should not be regularized in compassionate employment until he/she submits the caste/tribe validity certificate within a particular period after being appointed on compassionate basis. We are not of the view that such submission of the validity certificate be made a precondition for appointment, since compassionate appointment has to be granted urgently and keeping the candidate waiting until he/she submits a validity certificate, would defeat the purpose for which the compassionate appointment is to be granted. However, acceptance of the contention of the petitioners that they are not

required to submit validity certificates, despite their respective parents having obtained entry in public service on reserved posts for the backward property, would amount to creating a mode of backdoor recruitment which the law does not countenance.

41. In the above backdrop, we are of the view that the reserved category post occupied by the deceased employee would not be converted into an open category post after the demise of the employee. His entry in employment being on the basis of his reservation, would not alter the reservation applicable to the post. The said post would continue to be reserved for that category since a vacancy has suddenly occurred due to the demise of the employee, paving way for compassionate appointment.

42. We, therefore, hold that the legal heir being granted compassionate appointment in view of a vacancy created by the demise of the parent, who was appointed on the post reserved for a backward category believing that he did belong to such category, will mandate the compassionate appointee to tender the validity certificate after gaining compassionate employment.

43. For the reasons recorded hereinabove, we answer the issue framed in paragraph 7, in the affirmative.

44. Both the petitions are, therefore, devoid of merits

and stand dismissed. No costs.

45. However, in order to give an opportunity to both these petitioners, we direct the petitioners to submit their caste/tribe certificates to their respective employers within 15 days. The said employers would forward the claims of these petitioners to the competent scrutiny committee for validation as soon as possible but invariably within thirty days of such submission. The competent scrutiny committee shall then conduct the proceedings and ensure that the proceedings are completed within one year from the date of receipt of the claim papers. Until such claims are decided, the services of both these petitioners shall not be dispensed with. Their confirmation orders, if not yet issued, would be kept in abeyance till such decision of the competent scrutiny committee. If validity certificate is produced, follow-up steps to confirm/continue them in service will be taken without any delay. Should validity certificate be refused and such order of refusal be not interfered at an interim stage of any proceedings that may be brought before the Court by the petitioners, they will have to step down from the respective posts held by them subject to the result of such proceedings.

46. Before parting, we make two things clear. First, if

the parent of the compassionate appointee during his service tenure had submitted the validity certificate as proof of belonging to the particular backward category for which the post was reserved, the compassionate appointee may not again be required to produce the validity certificate. This is because the compassionate appointee inherits the caste/tribe of his/her parent and should not be asked to prove his/her caste/tribe status twice over. Secondly, if the deceased employee had not submitted the validity certificate as proof of belonging to the particular backward category for which the post was reserved, it shall be the duty of the employer, while calling upon the compassionate appointee to produce the validity certificate, to indicate with sufficient degree of clarity and reliable material that his/her parent obtained entry in public service on a post reserved for the backward category. This direction is made bearing in mind cases where the deceased employee, despite participating in the process as a candidate belonging to a backward category, might have secured appointment competing with open category candidates on his/her own merit and appointed against an open/unreserved vacancy and not against the reserved vacancy but the service book records that he/she belongs to a particular caste/tribe. Merely because of such an entry, production of

validity certificate in such cases should not be insisted upon and the compassionate appointee harassed.

47. Finally, we record our appreciation for the assistance rendered by all the learned advocates who addressed us in course of hearing.

(RAVINDRA V. GHUGE, J.)

Smt. Vibha Kankanwadi, J.: I agree.

(SMT.VIBHA KANKANWADI, J.)

CHIEF JUSTICE:

I have read the well-considered judgment authored by learned brother Justice Ghuge. While I wholeheartedly concur with the reasons assigned and the conclusions reached by His Lordship, I wish to add a few words having regard to the importance of the question that has emerged for an answer and particularly in view of the absence of a precedent of the Supreme Court directly on the point.

2. A public office is not heritable. The general rule of appointment to public service is through open invitation and on merits. Compassionate appointment, it is well known, is an

exception to such general rule. The object thereof is to mitigate the hardship due to the death of the bread-earner in the family by providing an appointment to an eligible dependent of the deceased to redeem the family in distress. In essence, compassionate appointment is a matter of policy of the employer and no appointment can be directed to be made contrary to such policy; hence, any claim for a compassionate appointment has to be in accordance with the policy/guidelines framed in this behalf and cannot be claimed as a matter of right. However, if any such policy exists, there cannot be a denial of the right of consideration for such appointment. These are very basic principles.

3. In cases of claims for compassionate appointment, at times, driven by endless compassion for the unfortunate family members of the deceased employee, some Courts momentarily forget that the supremacy of law must override all considerations of sentiments and sympathy.

4. It is this very aspect that engaged the attention of the Supreme Court in *Life Insurance Corporation of India vs. Asha Ramchandra Ambekar*, reported in (1994) 2 SCC 718. While dealing with a claim for compassionate appointment, the Court cautioned that the High Courts and the Administrative Tribunals

cannot confer benediction impelled by sympathetic consideration. One ought to know, there may be other cases even harder than the one under consideration waiting already for appointment on compassionate ground. There could be pitiable situations but, on that score, the statutory provisions cannot be put aside.

5. Turning to 'reservation', it has in our country attained a particular legal significance in matters relating to public employment. It connotes the setting apart of posts for being filled up by special categories of candidates. The Constitution of India provides for protective discrimination and reservation to enable the disadvantaged group to come on the same platform as that of the forward caste, thereby seeking to achieve a balance between the rights of the backward classes and the general stream. However, concededly, no citizen can claim reservation as of right since the provisions of Articles 15 and 16 of the Constitution are merely enabling provisions.

6. Since reservation is intended to bring about adequate representation of such categories as are not adequately represented in the services as well as empowerment of the backward classes, it is axiomatic that the object and purpose for reservation in public services are secured for the rightful

claimants. Such policy can never produce the desired results if the reserved posts are occupied by persons other than those for whom they are set apart.

7. In *Jagdish Balaram Bahira (supra)*, the object and purpose underlying the enactment of the State legislation, i.e., the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000, was noticed. According to the Supreme Court, the legislation is intended to regulate the issuance of caste certificates and to deal with instances which had come to light where persons who did not belong to the Scheduled Castes or Tribes or reserved categories were seeking appointments or admissions to the detriment of genuine candidates. The basic purpose and rationale for the legislation, the Court held, was to secure the just entitlements of legitimate claimants. The acts of the respondents, under challenge in these writ petitions, have their roots in such legislation.

8. What has been experienced in our country for quite some time past is that the dishonest spare no opportunity to obtain benefits and privileges, which are not meant for them, by

fraud or deceit. A post reserved for a backward caste being occupied by a candidate of a forward caste led the Supreme Court to observe in ***R. Vishwanatha Pillai (supra)*** that where an appointment in a service has been acquired by practising fraud or deceit, such an appointment is no appointment in law, and in such a situation Article 311 of the Constitution is not attracted at all. It was also held that a person obtaining appointment illegally will not be entitled to pension even since his appointment is void and *non est* in the eye of law, notwithstanding that he has served the employer for long years. Indeed, the judgment takes a very strong stance befitting the situation and sending a message, loud and clear, that dishonesty in the long run does not pay.

9. Having considered the decisions of the Supreme Court, the principle that follows is that an illegal appointment in the past cannot provide justification for a present grant and this must be the guiding factor.

10. Without production of the validity certificates, the deceased employees had only an inchoate right to continue on the posts they held. Their appointments on reserved posts could be seen as legal and valid in law, only upon production of the validity certificates. So long they did not produce the validity certificates, they all along stood on the edge of a precipice. But

for their unfortunate death, they were constantly under a statutory obligation to produce the validity certificates. Had the employer acted against them according to the provisions of the 2000 Act for non-production of the validity certificates during their lifetime, they would have been out of service and without the means of livelihood. Such a situation of losing service as well as pensionary benefits would have left the family members high and dry. If such a situation could not have been redeemed in any manner, I have failed to comprehend how the tragic circumstance of death of an employee, who had not in his lifetime produced the validity certificate, could operate to the advantage of his family members for securing an appointment on compassionate ground in his place which is contingent on 'death'. The right to be considered for compassionate appointment being consequential to the death of his/her parent, it is irrelevant whether the dependent family member has been appointed, on compassionate ground, on an open or unreserved post. The primary right to seek an appointment on compassionate ground flows from the fact that the father/mother was in public service and his/her appointment was legal and valid, in the sense that he enjoyed the protection guaranteed by Article 311 of the Constitution or the security of service provided by other laws.

Accepting the claims of the petitioners and holding that they need not produce validity certificates, on the face of their admission that their respective fathers were appointed on reserved posts, would amount to approval of the Court of the failure/omission/neglect of the deceased employees to discharge their statutory obligation of producing the validity certificates though they held posts which undoubtedly were not meant for them. If an usurper of a public office for decades does not have any right to claim pensionary benefits, *a fortiori*, any dependent family member of such usurper of public office can have no better rights than him. The petitioners having come into the picture after death of their fathers could not have better rights than their fathers. Allowing them to cling on to the posts, which came in their way fortuitously, would be unjust, unfair and inequitable. Securing the just entitlements of legitimate claimants would be difficult, if not impossible, if the contentions of the petitioners were accepted.

11. The multiple decisions of this Court, considered and dealt with (by learned brother Justice Ghuge in His Lordship's judgment) contain observations restricted to the facts before the respective Benches and cannot be read as authorities for the proposition that in no case of a compassionate appointment on an

open/unreserved post can the employer ask the appointee to produce the validity certificate of his/her caste/tribe.

12. Adequate protection has been carved out in the judgment for all compassionate appointees standing on the same footing as the petitioners and it is, therefore, just and proper that as directed by His Lordship the petitioners produce the validity certificates failing which consequences would follow as per law.

(CHIEF JUSTICE)

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