

AHMEDNAGAR MAHANAGAR PALIKA

A

v.

AHMEDNAGAR MAHANAGAR PALIKA KAMGAR UNION

(Civil Appeal No. 5944 of 2022)

SEPTEMBER 05, 2022

B

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Appointment – On Compassionate grounds – Ahmednagar Municipal Council was converted to Ahmednagar Mahanagar Palika / Municipal Corporation in 2003 – When the Council was in existence, an industrial dispute was raised by Union – One demand was with respect to employment to be given to heirs of the employees – In 1981, the Industrial Court directed that the employees in Class-IV category, if they die before their retirement; if they become invalid, or if they retire, their heirs should be given appointment in their place – In 2005 the Industrial Court modified the earlier award whereby compassionate appointment to heirs of employees on their superannuation /retirement was not provided and compassionate appointment was provided only to heirs of deceased employees of Class-IV category – Two other industrial dispute were raised by Ahmednagar Mahanagar Palika Kamagar Union where employment for heirs of retired employees as per award passed in 1981 was claimed – By judgment and award of 2016, the Industrial Court directed Ahmednagar Mahanagar Palika to provide employment to heirs of employees on their retirement on attaining the age of superannuation – High Court upheld the 2016 order of the Industrial Court – On appeal, held : The award of 1981 was passed when the Municipal Council was in existence – After the Municipal Council was converted into Municipal Corporation in 2003, its employees were governed by scheme framed by the State government which did not provide for appointment on compassionate grounds to heirs of employees on their retirement or superannuation – Even otherwise, appointment to heirs of employees on their retirement or superannuation would be contrary to the object and purpose of appointment on compassionate ground – If such an appointment is permitted, outsiders shall never get an opportunity to get an appointment though they may be more meritorious or more qualified

C

D

E

F

G

H

- A – *Such appointment would be violative of Arts. 14 and 15 of the Constitution – Constitution of India.*

Allowing the appeals, the Court

- HELD:** 1. In the year 2003, the Municipal Council has been converted to Municipal Corporation /Mahanagar Palika and all the employees under Mahanagar Palika/Municipal Corporation are governed by the scheme/rules & regulations framed by the State Government, which does not provide for any appointment on compassionate grounds or the appointment to the heirs of the employees on their superannuation /retirement. It was not open for the Industrial Court and/or even the High Court to direct the Mahanagar Palika/Municipal Corporation to provide appointment to the heirs of the employees on their retirement/superannuation, relying upon the judgment and award passed by the Industrial Court in Reference IT No. 51 of 1979. [Paras 5 and 6][202-H; 203-A; 205-B-C]
- D 2. After the conversion of the Municipal Council to Municipal Corporation/Mahanagar Palika, the employees of the Mahanagar Palika/Municipal Corporation shall be governed by the scheme framed by the State Government and at par with the government employees. The employees of the Mahanagar Palika/ Municipal Corporation shall be governed by the scheme of the State Government at par with the government employees, which does not provide for appointment on compassionate grounds to the heirs of the employees on their retirement and/or superannuation. [Para 7][205-C-F]
- F 3. 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. 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
- G H

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. [Para 8][205-F-H; 206-A-C]

A

B

C

3. Both the Judgment and award passed by the Industrial Court as well as the High Court in directing the Mahanagar Palika/Municipal Corporation to give appointment to the heirs of the employees on their superannuation and/or retirement is unsustainable. [Para 9][206-C-D]

D

The Secretary to Govt. Department of Education (Primary) & Others v. Bheemesh alias Bheemappa, 2021 SCC OnLine SC 1264 and Subhadra v. Ministry of Coal and Another (2018) 11 SCC 201- referred to.

E

Case Law Reference

(2018) 11 SCC 201 referred to Para 4.2

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5944 of 2022.

F

From the Judgment and Order dated 22.03.2022 of the High Court of Judicature at Bombay Bench at Aurangabad in Writ Petition No. 6806 of 2017.

With

G

Civil Appeal No.5945 of 2022.

Suhas Kadam, M/s Black & White Solicitors, Advs. for the Appellant.

H

- A Ms. Iyer Shruti Gopal, Anandh K., Ms. Anchal Raj, Advs. for the Respondent.

The Judgment of the Court was delivered by

M. R. SHAH, J.

- B 1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 22.03.2022 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition Nos. 6806/2017 & 3465/2017, by which the High Court has dismissed the said two writ petitions preferred by the appellant herein – Ahmednagar Mahanagar Palika, Ahmednagar and has confirmed the judgment(s) and award(s) passed by the Industrial Court dated 16.09.2016 and 21.09.2016 in Complaint (ULP) No. 55/2005 and Complaint (ULP) No. 83/2005 respectively, directing the Ahmednagar Mahanagar Palika to provide compassionate appointment to the eligible heirs in accordance with the provisions of award dated 30.03.1981 passed in Reference IT No. 51 of 1979, the Ahmednagar Mahanagar Palika has preferred the present appeals.

2. The facts leading to the present appeals in a nutshell are as under:

- E That in the year 2003, Ahmednagar Municipal Council was converted to Ahmednagar Mahanagar Palika. At the time when the Municipal Council was in existence, an industrial dispute was raised by the Union being Reference IT No. 51 of 1979. Demand No. 3 was with respect to the employment to be given to the heirs of the employees. At the relevant time, it was agreed by the Municipal Council that the employees in Class-IV category (if they die before their retirement) in all departments, except Health Department, if they become invalid, or if they retire, their heirs will be given appointment in their place. Consequently, by judgment and award dated 30.03.1981, the Industrial Court directed that the employees in Class-IV category, if they die before their retirement; if they become invalid, or if they retire, their heirs should be given appointment in their place.

- H 2.1 It appears that thereafter some further demands were raised and the judgment and award dated 30.03.1981 in Reference IT No. 51 of 1979 was sought to be modified and therefore the references were made to the Industrial Court being Reference (IT) No. 2 of 1993 to Reference (IT) No. 4 of 1993. Demand No. 4 was with respect to the

employment of the heirs of the employees (the same was at the instance of the Mahanagar palika). Ahmednagar Mahanagar Palika gave a notice of change in respect of demand of employment to the heirs of the employees as per Reference IT No. 51 of 1979 and the said dispute was referred for adjudication as Reference (IT) No. 2 of 1993. By judgment and award dated 21.02.2005, with respect to the aforesaid Demand No. 4, the Industrial Court modified the earlier award in Reference IT No. 51 of 1979 and directed the Ahmednagar Mahanagar Palika to provide (1) employment to the legal heirs of the employees of Class-IV category working in health department only (2) to provide the employment to the legal heirs of all categories, i.e., Class-I category to Class-IV category on compassionate ground as per government resolutions and circulars at par with government employees. Meaning thereby, under the said award, the compassionate appointment to the heirs of the employees on their superannuation/retirement was not provided and the compassionate appointment was provided only to the heirs of the deceased employees of Class-IV category.

A

B

C

D

2.2 It appears that thereafter two other industrial disputes were raised by the Ahmednagar Mahanagar Palika Kamgar Union against the Municipal Corporation/Mahanagar Palika which were in the year 2005 being Complaint (ULP) No. 55 of 2005 and Complaint (ULP) No. 83 of 2005. One of the reliefs claimed was for employment for the legal heirs of retired employees as per judgment and award dated 30.03.1981 passed in Reference IT No. 51 of 1979. By judgment(s) and award(s) dated 16.09.2016 and 21.09.2016 respectively, impugned before the High Court, the Industrial Court directed the Ahmednagar Mahanagar Palika to provide employment to the eligible heirs in accordance with the provisions in the award passed in Reference IT No. 51 of 1979. Thus, the Industrial Court directed to provide employment to the heirs of the employees on their retirement on attaining the age of superannuation. The judgment(s) and award(s) passed by the Industrial Court dated 16.09.2016 and 21.09.2016 passed in Complaint (ULP) No. 55/2005 and Complaint (ULP) No. 83/2005 respectively were the subject matter of writ petitions before the High Court. By the impugned common judgment and order, the High Court has dismissed/disposed of the aforesaid writ petitions as under:

E

F

G

“(a) The candidates in Annexures ‘A’ and ‘B’, who have not completed 45 years of age as on date, i.e., 01.03.2022 shall be

H

- A granted compassionate appointment on or before 30.04.2022 in the light of the vacancies available in view of the affidavit in reply dated 21.03.2022.
- (b) Those candidates who have completed 45 years of age as on 01.03.2022, would be entitled for a lump sum compensation of Rs. 5 lacs in lieu of compassionate appointment. Such compensation amount shall be paid, on or before 31.05.2022.
- B (c) The Municipal Corporation shall issue the orders of appointments to eligible candidates in view of the above directions, on or before 30.04.2022.”
- C 2.3 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court, the original writ petitioner – Ahmednagar Mahanagar Palika through its Commissioner has preferred the present appeals.
- D 3. Mr. Suhas Kadam, learned Advocate has appeared on behalf of the appellant – Ahmednagar Mahanagar Palika and Ms. Iyer Shruti Gopal, learned Advocate has appeared on behalf of the respondent – Union.
- E 3.1 Learned counsel appearing on behalf of the appellant – Mahanagar Palika has vehemently submitted that both, the Industrial Court as well as the High Court have passed orders relying upon the judgment and award dated 30.03.1981 passed in Reference IT No. 51 of 1979. That the said award was passed at a time when Ahmednagar Mahanagar Palika was a Municipal Council. In the year 2003, the Municipal Council has been converted to a Municipal Corporation and
- F the employees of the Mahanagar Palika/Municipal Corporation are governed by the rules and regulations/scheme framed by the State Government. Therefore, the employees of the Mahanagar Palika/Municipal Corporation shall be entitled to the benefit of the scheme of appointment on compassionate grounds at par with the government employees. It is submitted that therefore both, the Industrial Court as
- G well as the High Court have committed a grave error in directing the Mahanagar Palika/Municipal Corporation to give appointment to the heirs of the employees on their retirement and/or superannuation as per judgment and award dated 30.03.1981 passed in Reference IT No. 51 of 1979, which was in the year 1981 at the time when the Municipal
- H Council was in existence.

3.2 Relying upon the recent decision of this Court in the case of *The Secretary to Govt. Department of Education (Primary) & Others v. Bheemesh alias Bheemappa, 2021 SCC OnLine SC 1264*, it is further submitted that the appointment on compassionate ground shall have to be made as per the modified scheme. It is submitted that in the present case, subsequently by judgment and award dated 21.02.2005 passed in Reference (IT) No. 2/1993, the Industrial Court modified the demand with respect to employment to the heirs of the employees on their retirement/superannuation and directed that only the legal heirs of the deceased employees shall be entitled to appointment on compassionate ground. Also the legal heirs of all the categories shall be entitled to compassionate appointment as per the government resolutions and circulars at par with the government employees. It is submitted that both, the Industrial Court as well as the High Court have seriously erred in directing the Mahanagar Palika to give appointment to the heirs of the employees on their retirement/superannuation.

3.3 It is further submitted that even otherwise such a direction to give appointment to the heirs of the employees on their retirement/superannuation shall be hit by Article 14 of the Constitution of India and against the object of providing appointment on compassionate grounds.

3.4 It is submitted that as observed and held by this Court in a catena of decisions, the appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and such factors. It is submitted therefore also that such a direction to give appointment to the heirs of the employees on their retirement/superannuation ought not have been passed by the Industrial Court, confirmed by the High Court.

3.5 It is next submitted by the learned counsel appearing on behalf of the Mahanagar Palika/Municipal Corporation, that even otherwise, the direction issued by the High Court to pay a lump sum compensation of Rs. 5 lacs in lieu of the compassionate appointment to those candidates who have completed 45 years of age as on 1.3.2022 is unsustainable.

3.6 Making the above submissions and relying upon the above decision, it is prayed to allow the present appeals.

4. Both these appeals are vehemently opposed by learned counsel appearing on behalf of the respondent.

- A 4.1 It is vehemently submitted by the learned counsel appearing on behalf of the respondent that in the facts and circumstances of the case and considering the binding nature of the judgment and award passed by the Industrial Court dated 30.03.1981 in Reference IT No. 51 of 1979, neither the Industrial Court nor the High Court have committed any error in directing appointments to be given to the heirs of the employees on their superannuation and/or retirement.
- B 4.2 It is submitted that in the present case the parties are governed by the terms of the Bipartite Agreement resulting in judgment and award dated 30.03.1981 passed in Reference IT No. 51 of 1979. It is submitted therefore that there is no question of any discretion and the heirs of the employees are entitled to the appointment on compassionate grounds on the superannuation and/or retirement of the concerned employees. Reliance is placed on the decision of this Court in the case of *Subhadra v. Ministry of Coal and another, (2018) 11 SCC 201*.
- C 4.3 It is further submitted that as the heirs of the employees acquire the right of appointment under the judgment and award passed in Reference IT No. 51 of 1979, the concerned heirs of the employees are entitled to appointment being heirs of the employees on their retirement and/or superannuation.
- D 4.4 It is contended that the appointment to the heirs of the employees on their superannuation and/or retirement cannot be said to be an appointment on compassionate grounds but it is called *varas hakka*. It is submitted that therefore any decision of this Court on compassionate appointment shall not be applicable to the facts of the case on hand.
- E 5. We have heard learned counsel for the respective parties at length.
- F At the outset, it is required to be noted that in the present case, the Industrial Court has directed the Mahanagar Palika/Municipal Corporation to give appointment to the heirs of the employees on their superannuation/retirement as per judgment and award passed in Reference IT No. 51 of 1979. However, it is required to be noted that the said judgment and award was passed in the year 1981, at the time when the Municipal Council was in existence. That thereafter in the year 2003, the Municipal Council has been converted to Municipal Corporation/Mahanagar Palika and all the employees under Mahanagar
- G H

Palika/Municipal Corporation are governed by the scheme/rules & regulations framed by the State Government, which does not provide for any appointment on compassionate grounds or the appointment to the heirs of the employees on their superannuation/retirement.

6. Even otherwise, it is required to be noted that in Reference (IT) No. 2/1993, which was at the instance of Mahanagar Palika on the notice of change in respect of demand of employment to the heirs of the employee as per Reference (IT) No. 51 of 1979, the Industrial Court vide judgment and award dated 21.02.2005 directed the appointment on compassionate grounds to the heirs of the deceased employees only. It was specifically observed by the Industrial Court that at the time of passing earlier award in Reference IT No. 51 of 1979, i.e., in the year 1979 the demand to provide the employment to the legal heirs of the employees on their retirement/superannuation was reasonable, however, in the present situation the said demand does not appear to be good and reasonable. The Industrial Court further observed that, needless to say, now-a-days the unemployment problem is a very major problem and in spite of high qualifications the qualified persons are not getting jobs and they remain unemployed. While modifying the demand and directing to provide appointment on compassionate grounds to the legal heirs of the employees (on the death of the concerned employee), in judgment and award dated 21.02.2005 in Reference IT No. 2/1993, it was observed by the Industrial Court as under:

“It seems from the oral submissions of the parties that, at the time of passing earlier award in Ref. (IT) No. 51/1979 i.e., in the year 1979 the demand for providing the employment to the legal heir of employee was reasonable however in present situation the said demand does not appears to be good and reasonable. Needless to say, that nowadays the unemployment problems is very major. In spite of high qualifications, the qualified persons are not getting job and they are unemployed. In view of this demand there is no scope for qualified unemployed person to get the job in the establishment of the party no. 1, as the legal heirs of the employees will get the job in place of the employee working in the establishment of the party no. 1. Mr. Patil learned advocate for the party no. 1 rightly submitted that on the basis of this demand the legal heirs are claiming employment on attaining the majority and if the legal heir is minor at the time of superannuation and that

A

B

C

D

E

F

G

H

- A too after 10 years also under such circumstances in my opinion also the demand of providing employment to the legal heirs does not appear to be proper.
- B It has sufficiently come on record through the oral evidence of the parties that as per this demand the employment has been claimed as of right and there is no scope for selection of proper candidate, even the guidelines of the government regarding Reservation could not be followed. It is pertinent to note here that, as per the government policy certain post in the establishment are reserved for backward classes and on those post-employment is to be given to the candidate from reserve category however as there is no scope for employment to others, therefore, it is very difficult for the candidates from reserve category to get employment in the establishment of the party no. 1.
- C It has also come on record that, as per this demand the employment is being claimed for distant relative on the basis of adoption. True it is that the adoption can be made as per law and after adoption the adopted child because legal heir of that person however it seems from the various copies of documents placed before the Court that employment has been claimed for nephew on the basis of affidavit saying that the nephew is taking care of that employee.
- E Similarly, in another matter the employment is sought for adopted son by application dated 02.05.1997 and deed of adoption has been executed on 30.04.1997.
- F From these documents it can be said positively that the demand or providing employment to the legal heirs of the employees has been misused. Furthermore, nothing has been placed on record on behalf of the party no. 2 union that such practice is being continued in any other establishment. The witness of the party no. 2 union specifically asked about the however he could not brought any documentary evidence.
- G In my opinion also even though this demand was reasonable in 1979 however the same is certainly not reasonable and justified during present days and in the light of misuse of the demand it can be safely said that the party no. 1 is justified in seeking change in the demand in respect of providing the employment to the legal heirs of the employees on superannuation, invalidity or resignation,
- H

be now I am inclined to modify the demand and directing the party no. 1 to provide (1) employment to the legal heirs of the employees of Class-IV category working in health department only (2) to provide the employment to the legal heirs of all categories i.e. Class-I category to Class-IV category on compassionate ground as per government Resolutions and circulars at par with governments employees.”

A

B

In view of the above also, thereafter it was not open for the Industrial Court and/or even the High Court to direct the Mahanagar Palika/Municipal Corporation to provide appointment to the heirs of the employees on their retirement/superannuation, relying upon the judgment and award passed by the Industrial Court in Reference IT No. 51 of 1979.

C

7. After the conversion of the Municipal Council to Municipal Corporation/Mahanagar Palika, the employees of the Mahanagar Palika/Municipal Corporation shall be governed by the scheme framed by the State Government and at par with the government employees. As per the recent decision of this Court in the case of *Bheemesh alias Bheemappa (supra)*, the appointment on compassionate ground shall be as per the modified scheme. Therefore, the employees of the Mahanagar Palika/Municipal Corporation shall be governed by the scheme of the State Government at par with the government employees, which does not provide for appointment on compassionate grounds to the heirs of the employees on their retirement and/or superannuation.

D

E

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

F

G

H

- A 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
- B as Article 15 of the Constitution of India.

9. In view of the above and for the reasons stated above, both the Judgment and award passed by the Industrial Court as well as the High Court in directing the Mahanagar Palika/ Municipal Corporation to give appointment to the heirs of the employees on their superannuation and/ D or retirement is unsustainable and the same deserves to be quashed and set aside.

10. In view of the above and for the reasons stated above, both these appeals succeed. The impugned common judgment and order dated 22.03.2022 passed by the High Court as well as the judgment(s) and E award(s) dated 16.09.2016 and 21.09.2016 passed in Complaint (ULP) No. 55/2005 and Complaint (ULP) No. 83/2005 respectively directing the Mahanagar Palika/Municipal Corporation to appoint the heirs of the employees on their retirement/superannuation in terms of judgment and award dated 30.03.1981 passed in Reference IT No. 51 of 1979 are hereby quashed and set aside.

F 11. Accordingly, the instant appeals are allowed in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs.