IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8337 OF 2020

1. Smt. Mangal Umakant Udawant
   Age: 46 years, Occ. Housewife,
   R/o S. T. Karmachari Housing Society,
   Keshav Nagar, Latur Dist. Latur

2. Milind Umakant Udawant,
   Age: 22 years,
   Occ. Nil R/o as above ..Petitioners

VERSUS

1. The State of Maharashtra,
   Through its Secretary,
   Ministry of Transport Mantralaya,
   Mumbai.

2. The Managing Director,
   M.S.R.T.C. Mumbai,
   Dr. Anand Nair Marg,
   Wahatuk Bhavan,
   Mumbai-400 008.

3. The Divisional Controller,
   M.S.R.T.C., Nanded Division,
   Nanded ..Respondents

Mr.A.S.Bayas, Advocate for petitioners
Mr.R.S.Wani, AGP for respondent no.1
Mr.A.B.Dhongade, Advocate for respondent nos.2 and 3

CORAM : KISHORE C. SANT &
AJIT B. KADETHANKAR, JJ.
DATE : JULY 01, 2026

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. By consent of the parties, the petition is taken up for final disposal at the stage of admission.

2. Heard Mr.Bayas, learned counsel for the petitioners; learned AGP for respondent no.1; and Mr.Dhongade, learned counsel for the respondent no.2 and 3.

3. The petitioners have approached this court seeking relief in view of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (“the Act of 1995”, for brevity) and also for the relief of compassionate appointment and setting aside the order of termination dated 06.02.2014, issued by respondent no.3.

4. The facts, in short, are that the husband (deceased) of petitioner no.1 and father of petitioner no.2 was appointed as a Driver with respondent no.3 on 30.10.1997. While on duty, unfortunately, he met with an accident on 02.04.2013. Since he could not recover and work to his full capacity, on 12.10.2013, he made an application for giving some light work and to accommodate him in another Department. He was directed to approach the

Medical Board and to get a certificate. The Medical Board, on examining him, gave a report that the deceased was not in a position to do the work of a Driver but was fit for doing light work. Respondent no.3, however, by order dated 06.02.2014, terminated the services of the deceased stating that he was not fit to work as Driver. Thereafter, unfortunately, the husband of petitioner no.1 died on 22.02.2014 due to illness. The petitioners immediately filed an application on 17.03.2014 for giving compassionate appointment. The respondent no.3, however, by communication dated 24.03.2014, informed the petitioners that compassionate appointment is given only to a person whose relative has died while in service. It was further informed that since in the present case, the deceased employee (husband of petitioner no.1) was terminated, compassionate appointment cannot be given. The petitioners are, therefore, before this court.

5. Mr.Bayas, learned counsel for the petitioners, vehemently argued the petition. He submits that in view of Section 47 of the Act of 1995, the petitioner no.1’s husband could not have been dismissed from the service. He had already made an application to give him light work and to accommodate him on any suitable post. Though respondent no.3 was duty bound to

accommodate the deceased, he was not given benefit of Section 47 of Act of 1995 and he came to be terminated. This is totally against Section 47 Act of 1995. He submits that on one hand, the petitioner no.1's husband was not given light work and was terminated from service; on the other hand, compassionate appointment has been refused giving reason that the deceased was terminated from the service. Mr.Bayas submits that both the orders passed by the respondent no.3 require to be quashed and set aside by allowing this Writ Petition.

6. Mr.Dhongade, learned counsel for respondent no.3, vehemently opposes the petition. He submits that the scheme of giving compassionate appointment is only for the purpose of providing immediate relief to the family of the deceased. Since the deceased was not in a position to do the work of Driver, he was rightly terminated from service. Since he was terminated, there is no question of giving any job to any person from the family of the deceased on compassionate ground. He submits that the petition may be dismissed.

7. This court has considered the submissions. During the course of arguments, Mr.Bayas, learned counsel for the petitioners, relied on the judgment of this court in **Writ Petition No.6937 of**

2017 (Shaikh Salim Shaikh Amir Vs. The State of Maharashtra and others) decided on 01.10.2019. This court in the said case, has dealt with somewhat similar situation and held that in view of Section 47 of the Act of 1995, the person could not have been deprived of his service merely on the ground of acquiring disability. For the sake of convenience, Section 47 of the Act is reproduced:-

> *47. Non-discrimination in Government employments.-*
>
> *(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:*
>
> *Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits.*
>
> *Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.*
>
> *(2) No promotion shall be denied to a person merely on the ground of his disability:*
>
> *Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."*

8. Considering Section 47 of the Act of 1995, this court finds that the petitioner no.1's husband (deceased) could not have been terminated from service merely on the ground of acquiring disability. It is more so, when the Medical Board has clearly opined that the deceased was fit for doing light work. The authorities ignored the said report and terminated the services of the petitioner no.1's husband (deceased), which is against Section 47 of the Act of 1995.

9. The submission of the petitioners deserves consideration that compassionate appointment could not have been denied on the ground that the deceased was terminated from service. It is also pointed out by Mr.Dhongade that on 03.12.2015, a communication was sent to him, stating that all the benefits except payment of leave encashment are granted to petitioner no.1 and the pension proposal is already forwarded to the concerned authority. We take a note of this. The grievance so far as service of the deceased is, thus, redressed except payment of leave encashment.

10. In view of the above, the Writ Petition is allowed in terms of the following order:-

(i) The order dated 06.02.2014 issued by respondent no.3, terminating the services of the deceased, stands quashed and set aside

(ii) The communication dated 24.03.2014, issued by respondent no.3, rejecting the application of petitioners, seeking compassionate appointment also stands quashed and set aside.

(iii) So far as compassionate appointment is concerned the respondent no.3 is directed to include the name of the petitioner no.2 (son of deceased and petitioner no.1) in the list of the persons to be appointed on compassionate ground. His name should stand in the list considering he was there on the date of rejection of his application, i.e. 24.03.2014 and he be given the benefit as per the scheme and law.

(iv) We also direct the respondent no.2 to release the benefit of leave encashment to the petitioners within three months from today.

(v) Rule made absolute in the above terms.

[AJIT B. KADETHANKAR, J.] **[KISHORE C. SANT, J.]**

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