

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8108 OF 2014

KIRAN BHAUSAHEB TAPALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Mr. Barde Parag Vijay
AGP for Respondent/State : Mr. S.K. Kadam
Advocate for Respondent no.2 : Mr. Lokhande Kishor N.

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CORAM : S.S. SHINDE & P.R. BORA, JJ.

Dated: April 30, 2015

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PER COURT :-

This Petition takes exception to the order dated 02.05.2014 issued by Ahmednagar Municipal Corporation, Ahmednagar.

2. It is the case of the petitioner that, the father of the petitioner was appointed as Bigari in the Respondent – Municipal Corporation on 1st July, 1991. The petitioner's father died on 15.10.2009. On the said date, he was working as Sweeper. During course of employment, father of the petitioner died. Mother of the petitioner is suffering from Cancer and the petitioner is having two minor sisters. The mother of the petitioner applied to the Respondent Corporation for appointment

on compassionate ground, as per the provisions of Award in Reference (ID) No. 234 of 1993. At the relevant time, the petitioner was minor. Since there was no response from the respondents, the petitioner approached the Industrial Court by way of filing Complaint (ULP) No.75 of 2010. The said complaint was rejected, however, the Industrial Court observed that, the petitioner can apply the Respondent - Corporation for appointment on compassionate ground. Accordingly once again application was filed by the petitioner with the Respondent - Corporation, however, the said application is turned down on three grounds (i) the said application was not within time, (ii) the father of the petitioner was appointed as 'Bigari' as a special case and (iii) father of the petitioner was working on the post of Bigari.

3. The learned counsel appearing for the petitioner submits that, the mother of the petitioner is suffering from Cancer and admitted in Cancer hospital for treatment. The petitioner has also having two minor sisters. The petitioner's family is facing severe financial hardship. The learned counsel appearing for the petitioner also invited our attention to the order dated 30th April, 2013 passed in Writ Petition No. 2341 of 2012 by the Bombay High Court bench at Aurangabad presided over by the learned Single Judge, wherein the

cases of the similarly situated persons, who applied for the appointment on compassionate ground were considered and the Municipal Council was directed to forward the proposal of the petitioners therein to the Secretary, Urban Development Department, Mantralaya, Mumbai, and the Secretary, Urban Development Department was directed to decide the same within three months thereafter, on its own merits.

4. On the other hand the learned counsel appearing for the respondents invited our attention to the averments made in the affidavit in reply and submits that, the Respondent – Corporation does not possess the power of creating posts, therefore Respondent no.2 is unable to accede to the request of the petitioner to appoint the petitioner on compassionate ground.

5. We have given careful considerations to the submissions advanced by the learned counsel appearing for the petitioner, the learned counsel appearing for the respondent and the learned Additional Government Pleader for Respondent No.1. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto and reasons assigned in the impugned order rejecting the application of the petitioner for appointment on

compassionate ground.

6. So far filing of the application within time is concerned, the application is filed by the mother of the petitioner since the petitioner was minor at the relevant time. In the said application, which was filed by the mother of the petitioner, the request was made for appointment of the petitioner on compassionate ground when the petitioner become major. Therefore, the said application was well within time.

Coming to the 2nd ground assigned in the impugned order, the post on which the petitioner's father was appointed was Bigari, and therefore, the petitioner is not entitled is devoid of any merits. On careful perusal of the Exhibit R-1 on page 54 of the compilation of the Writ Petition, it is abundantly clear that, the appointment of the petitioner's father was on the post of Bigari in regular pay scale. The said appointment order no where mentions that, the said appointment is as special case. In that view of the matter, the second ground as mentioned in the impugned order can not sustain. In case of appointments on compassionate ground of legal representatives of the employee working on the post of Bigari is concerned, there are recommendation of Lad Committee and also the Government resolution to that

effect. In that view of the matter and also as per the provisions of Award, of which copy is annexed to the Petition at Annexure 'C' page 11 of the compilation of the Writ Petition, the petitioner was entitled to apply for the post on compassionate ground.

7. In the light of discussion hereinabove, the impugned communication is set aside.

We direct the respondent – Corporation to forward the proposal of Kiran Bhausahab Tapale to the Secretary, Urban Development Department, Mantralaya, Mumbai, within three weeks from today. Upon receipt of the said proposal, the Secretary, Urban Development Department, Mantralaya, Mumbai shall decide the same within two months thereafter, on its own merits and without being influenced by the fact that, the complaint filed by the petitioner has been rejected and communicate the decision to the petitioner. The petition is disposed of on above terms.

(**P.R. BORA, J.)**

(**S.S. SHINDE,J.)**

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