

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9913 OF 2014

SUBASH SHIVRAM GANGAWANE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Shri R. H. Wagh
AGP for Respondent 1 : Shri D. V. Tele
Advocate for Respondent 2 : Smt. Manjusha A. Deshpande

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CORAM : S.S. SHINDE & RAVINDRA V. GHUGE, JJ.

Reserved on : April 21, 2015
Pronounced on : April 30, 2015

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

1. The petitioner has preferred this petition under Article 226 of the Constitution of India, praying as under:-

" (a) This writ petition may kindly be allowed.

(b) By issue of appropriate writ, order or direction the Respondent no.2 may kindly be directed to consider the case of petitioner and give him appointment on compassionate ground in any Class-IV category post;

(c) Pending hearing and final disposal of the writ petition, the respondent No.2 may kindly be directed to issue appointment order thereby appointing the petitioner on compassionate ground in any Class-IV category post, forthwith."

2. The petitioner submits that his father who had joined the respondent No.2 - Aurangabad Municipal Corporation as a labourer on 19.1.1979 on temporary basis, was then appointed as a Pump Operator with effect from 1.10.1982 and was retired from employment on 10.9.2010 owing to a paralytic attack.

3. The petitioner is born on 25.2.1975. Since his father was retired on medical ground while working as a Pump Operator, the petitioner preferred an application on 27.10.2010 at the age of 35 years, for appointment on compassionate ground. He has acquired education up to the VIII Standard. His grievance is that his name was not included in the wait list prepared by respondent No.2 for issuing appointments on compassionate grounds.

4. The petitioner has placed on record the Government Resolution dated 30.6.1994, by which, the legal heirs of such Safai Kamgars, who have retired on the ground of being medically unfit or have passed away or have opted for voluntary retirement, can be appointed on compassionate grounds in place of their father / mother. It is submitted that the said Government Resolution is still in force.

5. The petitioner has placed reliance upon the order of this Court (Coram: B.R.Gavai, J.), delivered in Writ Petition No. 2614 of 2009 with connected petitions, dated 3.7.2009, by which, similarly situated employees were reinstated in employment.

6. The petitioner, therefore, prays that he be appointed on compassionate grounds since similarly situated persons have been so appointed.

7. Smt. Deshpande, learned Advocate appearing on behalf of the respondent No.2 Corporation has relied upon the affidavit-in-reply filed by the Establishment Officer of the Corporation. It is stated that the petitioner's father was declared unfit on account of having suffered a paralytic stroke and, therefore, was retired, while he was working as a Pump Operator.

8. By the introduction of the Government Resolution dated 22.8.2005, the effect of the Government Resolution dated 30.6.1994 has been nullified. By the new Government Resolution, only if an employee has passed away, while in employment, then alone would his legal heir be entitled to apply for compassionate appointment, provided he is of 40 years or there-below. She, therefore, submits that the petitioner cannot be considered for compassionate appointment, since his father stood medically retired as a Pump Operator.

9. The petitioner has filed an affidavit-in-rejoinder and has pointed out instances of such persons, who have been appointed on compassionate grounds, who, as per the stand taken by the respondent - Corporation, are ineligible for appointment. The instances cited, through the documents on record, are as follows:-

Sr.	Sr.No. in the List	Name	Appointed in the place of-	Who worked as-
1	23	Kailash Laxman Karke	Father	Mali (Gardner)
2	29	Asaram Laxman Dehade	Father	Maleria Majoor
3	30	Sandu Ananda Kharat	Father	Maleria Majoor
4	31	Sachin Bhaskarrao Gaund	Mother	Peon
5	32	Shaikh Abdul Khadir	Sister-in-law	Asstt. Teacher
6	47	Sumanbai Radhesham Shejwal	Father-in-law	Jawan(Watchman)
7	50	Nandkumar Ramesh Zadge	Father	Maleria Majoor
8	55	Shobhabai Subhash Devatkar	Husband	Watchman
9	58	Mangal Sanju Jondhale	Husband	Fireman
10	59	Latabai Suresh Bhalerao	Husband	Naka Jawan
11	63	Ram Ashok Gudekar	Father	Maleria Majoor
12	65	Latabai Punjaram Jadhav	Father-in-law	Maleria Majoor
13	67	Vinod Chagan Magare	Father	Lineman
14	69	Shaikh Afroz Shaikh Karim	Father	Mali (Gardner)
15	72	Shankar Sukhdeo Gaikwad	Father	Maleria Majoor
16	79	Chandrakala Devidas Pakhare	Husband	Maleria Majoor

10. The petitioner has, therefore, submitted that the respondent Corporation is adopting a stand prejudicial to the interest of the petitioner, despite having given preferential treatment to such persons as illustrated hereinabove.

11. We have considered the rival submissions of the parties. We are not convinced that the Government Resolution dated 22.8.2005, can be said to be applicable to the employees of the Municipal Council or Municipal Corporation. The said Government Resolution specifically indicates that it is in connection with the employees of the State Government.

12. Learned Advocate for the respondent No.2 was unable to point out from the said Government Resolution, either to indicate that the said Government Resolution applies to the employees of the Municipal Corporation / Municipal Council or it nullifies the effect of the Government Resolution dated 30.6.1994, which is specifically made applicable to the employees of the Municipal Corporation / Municipal Council.

13. This Court (Coram : Naresh H. Patil & Ravindra V. Ghuge, JJ.) (at Principal Seat at Bombay), has held in Writ Petition No.6587 of 2012 (Arvind Sakharam Patil Versus The State of Maharashtra and others), by judgment dated 2.7.2014, that employees of the Municipal Corporation or Municipal Council cannot be construed to be the employees of the State Government. The relevant observations read as under:-

" 7. The short question for our consideration is as to whether the claim of the petitioner that he is a "State Government employee" on account of his employment with the Corporation, deserves to be accepted or not?

8. Learned AGP for the respondent authorities submitted that there were 149 applications, out of which 46 were prima facie eligible. 27 candidates were short listed and invited for interviews in accordance with the Rules and 8 candidates were recommended to the Government for appointment. The learned AGP strenuously submitted that the employment of the petitioner with the Corporation does not amount to his being an employee of the "State Government" and that the Corporation is a local body and may be an instrumentality of the "State" but would not amount to the petitioner being an employee of the "State Government".

9. *The Honourable Supreme Court in the case of UPSC Vs. Dr. Jamuna Kurup and others ((2008) 11 SCC 10) has held in paragraph No.16 as under:-*

“ The learned counsel for the appellant submitted that the advertisement granted age relaxation to employees of MCD and employees of the Government of India, and that the words “permanent” or “regular” were not used either with reference to “employees of the Government” or “employees of MCD”. It is pointed out that in Vaghela (supra) this Court while dealing with persons employed in identical circumstances, that is “engaged for a period of six months from the date of joining or till a candidate selected by UPSC joined on a regular basis”, held that the term “government servant” did not refer to or include persons employed on contract basis. It is argued that on the same principle, the term “employees of MCD” cannot include a contract employee of MCD. We cannot agree. Vaghela related to contract employment by the Government whereas in this case the contract employment is by a municipal corporation. The reason that weighed with this Court in Vaghela to hold that a contract employee was not a government servant, was in view of the special connotation of the term “government servant”. This Court after referring to the decision of the Constitution Bench in Roshan Lal Tandon v. Union of India (1968 (1) SCR 185) and the decision in Dinesh Chandra Sangma v. State of Assam (1977 (4) SCC 441) held that employment under the Government is a matter of status and not a contract even though acquisition of such a status may be preceded by a contract; and that contract employees of the Government were governed by the terms of contract and did not possess the status of government servants, nor were governed by the

Rules framed under Article 309 of the Constitution, nor enjoyed the protection under Article 311. But a municipal corporation is not “Government”, and municipal employees are not government servants governed by Articles 309 to 311. Though permanent employees of municipal corporation or other statutory bodies may be governed by statutory rules, they do not enjoy the status of government servants. Therefore, the decision in Vaghela, rendered with reference to government servants may not be of any assistance in interpreting the term “employees of MCD”. In fact, for that very reason, these matters were delinked from the hearing of Vaghela.”

10. *Having heard learned Advocates for the parties and having gone through the petition paper book with their assistance, in light of the judgment of the Honourable Supreme Court in the case of UPSC (supra), we are of the view that the employment of the petitioner with Kalyan-Dombiwali Municipal Corporation does not amount to he being an employee of the “State Government”. In this view of the matter, the contention of the petitioner that there should be no upper age restriction for recruitment treating him to be in the employment of the “State Government” is mis-conceived. We are not inclined to accept the said contention.”*

14. This Court, by its order dated 3.7.2009 passed in Writ Petition No.2614 of 2009 and other connected Writ Petitions, cited by the petitioner, has held in paragraph Nos.5 to 9 as under:-

“5. No doubt, this court is very slow in granting interim relief in the nature of mandatory injunction. Unless compelling and exceptional circumstances are made out, this court would not grant interim relief in the nature of a mandatory order.

6. *A specific case is made out by the present petitioner that out of 89 employees only the petitioners who are 7 in numbers are singled out. Since the affidavit in reply filed by the respondent dated 24/6/2009 was silent in this respect, an additional affidavit in reply was directed to be filed. Accordingly the same is filed by the respondent corporation on 30/6/2009. The only submission made in the said reply is that after examining each and every case of such employees, appointment of 10 persons was found to be illegal and therefore action against the present petitioners has been initiated. Reliance is sought to be placed on the report of the Committee constituted by the Corporation. The said report states that since the recommendation of the Lad Committee are only applicable to the Safai Mazdoor and Bhangi Kamgars, the present petitioners do not fall in that category and, therefore, they should not be continued.*

7. *However, a perusal of the entire list at Page Nos. 68 to 72 in W.P. No. 2614/2009 would reveal that only 13 employees in whose place their legal heirs have been appointed are either Safai Mazdoor or Bhangi Kamgars. Rest of the employees in the said list are either Mazdoor Mali, Maleria Major, Naka Jawan, Watchmen etc. Surprisingly, one of the employees whose legal heirs have been appointed was working as an Assistant Teacher.*

8. *It is thus clear that the stand taken by the Corporation is totally inconsistent with the record. I find that the case of the present petitioners is similar with the case of the rest of the employees whose legal heirs have been appointed and continued. In that view of the matter, I am of the considered view that the petitioner has been in a position to make an exceptional case for grant of interim relief, which is in the nature of mandatory injunction.*

9. *Interim Relief is, therefore, granted in terms of prayer clause (F) in all these petitions. Needless to state that the orders of reinstatement shall be issued within a period of a fortnight from today."*

15. The observations of this Court, as reproduced above, were in connection with the Aurangabad Municipal Corporation, which is the same respondent No.2 herein. We have also taken into account the examples cited by the petitioner in his affidavit-in-rejoinder as reproduced hereinabove, which indicate that 89 persons have been appointed on compassionate grounds. Some of the employees had retired as Assistant Teacher, Jawan, Fireman, Lineman, Gardener etc. Yet, their legal heirs were appointed on compassionate grounds.

16. In the light of the above, we find it appropriate to direct the respondent No.2 to consider the application of the petitioner dated 27.10.2010 afresh, in the light of the observations made in this order and the observations of this Court in its order dated 3.7.2009, reproduced hereinabove.

17. This petition is, therefore, partly allowed. The respondent No.2 Corporation is directed to consider the application of the petitioner, dated 27.10.2010 on its own merits and taking into account the appointments made by the respondent No.2 Corporation, which have been cited as examples by the petitioner. Looking at the passage of time and the fact that the petitioner has completed 40 years of age, respondent No.2

Corporation shall decide his application as expeditiously as possible and preferably within a period of three months from the date of this order.

(RAVINDRA V. GHUGE, J.)

(S.S. SHINDE, J.)

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