

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5507 OF 2014

Udgir Municipal Council,
Udgir, Taluka Udgir,
District Latur
Through its Chief Executive Officer

... Petitioner

Versus

1] The State of Maharashtra
Through Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.

2] Directorate of Municipal Administration,
Government Transport Service Building,
3rd Floor, Sir Pochkhanwala Road,
Worli, Mumbai.

3] Shaikh Afjal Shaikh Valiuddin
Age: 27 years, Occu. Labour
R/o. Sayyad Chand Dargah
Nideban Ves, Udgir,
Taluka Udgir, District Latur

... Respondents

.....
Mr. Parag V. Barde, Advocate for the petitioner
Mr. S. B. Pulkundwar, AGP for respondent Nos. 1 & 2
Ms. A. N. Ansari, Advocate for respondent No. 3
.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Judgment : 23.02.2015**

**Date of pronouncing
the Judgment : 03.03.2015**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By consent of the

parties, heard finally.

2. By filing this writ petition, the petitioner assails legality, validity and correctness of judgment and order dated 6.8.2013 passed by learned Member, Industrial Court, Latur in complaint (ULP) No. 123 of 2012.

Brief facts giving rise to the present writ petition are as follows:-

3. By filing complaint (ULP) No. 123 of 2012, respondent No.3 herein contended that his father was working as *Safai Kamgar* and stood retired from service in the year 2007, on superannuation. After his retirement, respondent No.3 applied for compassionate appointment but the same was refused. According to respondent No.3, his father was permanent employee of the petitioner and the only source of income for entire family is the pension of his father. Respondent No.3 has also contended in the said complaint that he is entitled for benefit of recommendations of Lad Committee. It is the case of respondent No.3 that in such circumstances, by denying compassionate appointment, the petitioner is indulged in unfair labour practice. Respondent No.3 therefore, has approached the Industrial Court Latur, by filing aforesaid complaint. The petitioner has strongly resisted the said complaint with contention that

respondent No.3 is not entitled for benefit of Lad committee's recommendations, as his father was not working on the post of *Safai Kamgar* but was working as Gardner. It was also pointed out that once the services are made permanent after the year 2000 as one time exception, such employee cannot claim any benefit of compassionate appointment. The learned Member of Industrial Court, Latur, by its impugned judgment and order dated 06.08.2013, directed the petitioner to appoint respondent No.3 as per recommendations of Lad Committee. Hence, this writ petition.

4. Learned counsel for the Petitioner submits that father of respondent No.3 is still alive and in such circumstances, the complaint is maintainable at his behest and not at the behest of respondent No.3. Learned counsel submits that as such, there is no employer-employee relationship between respondent No.3 and the petitioner. In absence of such relationship, the Industrial Court does not get jurisdiction to adjudicate upon the matter. Learned counsel also submits that father of respondent No.3 was working as Gardner and he was made permanent as Labour and not as *Safai Kamgar* with the petitioner Municipal Council. In such circumstances, recommendations of Lad Committee are not applicable. Learned counsel for the petitioner also submits that while advancing permanency benefits to the employees working on temporary basis

with the Municipal Council, like the father of respondent No.3, the State Government has made it clear that heirs of such employees, who are made permanent after 2000, will not be entitled for any benefit of appointment on compassionate ground. Learned counsel submits that father of respondent No.3 had worked as Gardner and there is sufficient documentary evidence to substantiate that father of respondent No.3 was working in Water Supply Department with the petitioner. Learned Member of the Industrial Court, by ignoring entire evidence, directed the petitioner to appoint respondent No.3 on compassionate ground, as per the recommendations of Lad Committee, which is not proper and correct.

5. The learned counsel for the petitioner, to substantiate his contention that in absence of employer-employee relationship, the Industrial Court has no jurisdiction to entertain the complaint, has placed reliance on the following judgments:-

- i) General Labour Union (Ref Flag) Bombay, vs. Ahmedabad manufacturing and Calico Printing Company Limited (Calico Mills) Ahmedabad, reported in 1995 (Suppl. 1) SCC 175.
- ii) Vividh Kamgar Sabha vs. Kalyani Steels Ltd. And Anr. Reported in AIR 2001 SC 1534

- iii) Sarva Shramik Sangh vs. M/s. Indian Smelting and Refining Co. Ltd. And Ors. reported in AIR 2004 SC 269.
- iv) Indian Seamless Metal Tubes Ltd. vs. Sunil Rambhau Iwale and Ors., reported in 2003 (Supp.) Bom.C.R. 39.
- v) Lokmat properties, Lokmat News Papers Ltd. vs. Prabhakar Rambhauji Choudhari and others, reported in 2003 (4) Bom. C.R. 391.
- vi) Janprabha Offset Works vs. Sarva Shramik Sangh and Anr. Reported in 2007 (3) Bom. C.R. 91
- vii) Maharashtra State Co-op. Cotton Growers Mkt. Federation Ltd. vs. Asha Joseph Dmello & Anr, reported in 2008 (Suppl.) Bom. C.R. 446.

6. The learned counsel for the petitioner also placed his reliance on the following two judgments of the Hon'ble Supreme Court to demonstrate that the compassionate appointments are required to be made strictly as per the regulations and administrative instructions;-

- i) National Hydroelectric power Corporation and Anr. vs. Nanak Chand and Anr. reported in AIR 2005 SC 106
- ii) Commissioner of Public Instructions and others, vs. K.R. Vishwanath, reported in AIR 2005 SC 3275.

7. Learned counsel for respondent No.3 submits that father of respondent No.3 was in employment of the petitioner as *Safai Kamgar* and on 28.2.2007 he reached at the age of superannuation and accordingly, retired from service. Learned counsel further submits that as per recommendations of Lad Committee, after retirement of employee working as *Safai kamgar* in class IV category, his heir/nominee will be taken in employment. Learned counsel submits that though father of respondent No.3 was working as *Safai Kamgar*, as and when exigency arose, he was assigned with other work also. Learned counsel also submits that respondent No.3 is affected person, stands in the shoes of his father and as per scheme based on recommendations of Lad Committee, nominee of an employee who retired as *Safai Kamgar*, is entitled for employment on compassionate ground. In view of this, the Industrial Court gets jurisdiction to deal with the complaint filed by affected person. Learned counsel thus submits that the learned Member, Industrial Court has rightly allowed the complaint and thereby declared that the petitioner engaged in unfair labour practice and further directed the petitioner to appoint the complainant on compassionate ground as per the recommendations of Lad committee in accordance with law.

8. I have also heard the learned A.G.P. for respondent Nos. 1

and 2.

9. So far as appointment claimed by respondent No.3 as per recommendations of Lad committee is concerned, in its stricter sense, it cannot be construed as compassionate appointment. As per the Government Resolution dated 19.10.2004, Exh.C, legal heirs of an employee, who was working as *Safai Kamgar* or Scavengers, are entitled for appointment as per recommendations of Lad Committee. It is also clear from the contents of said Resolution that such appointment can be made after retirement of such employee who was working as *Safai Kamgar* or Scavenger. Respondent No.3, certainly is an affected person, approached the Industrial Court with a grievance that because of unfair labour practice adopted by the employer, he was deprived of getting appointment on compassionate ground, though is entitled under the above stated Government Resolution based upon recommendations of Lad Committee. In view of the Government Resolution, as referred in the judgment, the legal heirs of employee is entitled for compassionate appointment. Thus, respondent No.3 steps in the shoes of his father and there is notional extension of relationship between the petitioner and respondent No.3 in this backdrop. Learned counsel for the petitioner has placed his reliance on the above mentioned cases which are altogether on different point and thus cannot be made applicable to the facts and

circumstances of the present case. Those cases are on the point of denial of employee employer relationship on usual ground. However, the facts of the present case are peculiar and moreover the Division bench of this Court had also granted liberty to respondent No.3 to approach the Industrial Court for redressal of his grievances. In my considered opinion, the complaint is therefore, maintainable before the Industrial Court and the learned Member, Industrial Court has rightly entertained the same.

10. Learned counsel for the petitioner further submits that father of respondent No.3 was working as Gardner and thus, though he was appointed and retired as *Safai Kamgar*, respondent No.3 being his legal heir, is not entitled for appointment on compassionate ground in view of specific clause in Government Resolution barring the applicability of recommendation of Lad Committee for such appointment. On perusal of Government Resolutions dated 19.10.2004 & 16.5.2005 and Circular dated 23.3.2006, it appears that if an employee is doing any other work, though appointed as *Safai kamgar*, his legal heir is not entitled for an appointment on compassionate ground. In the case in hand, there are certain documents produced on record showing that father of respondent No.3 was working as Gardner in Water Supply Department for certain period. In para 9 of the impugned judgment, the learned

Member of Industrial Court has reproduced cross examination of original respondent No.2 (petitioner herein). It appears that original respondent No.2 (petitioner herein), in his cross examination, has admitted that father of complainant was granted pensionary benefits. He further admits that as per exigency of work, if *Safai Kamgar* is appointed, his services can be transferred to any other department within the Municipal Council and accordingly, father of complainant was transferred in Water Supply Department. He has further admitted in his cross examination that father of complainant was again transferred to Sanitary Department. It thus appears that the basic nature of appointment of father of respondent No.3 remained unaffected and his duties also remained the same. It is quite important to note here that father of respondent No.3 was retired as *Safai Kamgar*. Only because at some time, as and when occasion arose, if father of respondent No.3 had worked in other department, does not dis-entitle respondent No.3 to claim benefits under said Government Resolution based upon recommendations of Lad Committee.

11. Learned counsel further submits that since father of respondent No.3 was granted permanency benefits, in view of above State Government Resolutions, respondent No.3 is not entitled for compassionate appointment. It is clear from the Government

Circular dated 23.3.2006 that *Safai Kamgar* employees are exempted from the purview of Standing Order No. 23. As per clause 11 of Annexure to Government Circular dated 23.3.2006, certain legal heirs of *Safai Kamgar* will not have right for compassionate appointment. This circular, alongwith the Annexure, came to be issued as a clarification, since the Government has received complaints from various Nagar Panchayats in implementing the recommendations of Lad Committee. On careful perusal of clause 11 of the said Annexure, it appears that case of respondent No.3 does not fall in any category. It is nowhere mentioned in clause 11 that the *Safai Kamgar* who has been granted permanency benefits, his legal heir is not entitled to claim compassionate appointment in view of recommendation of Lad committee.

12. Learned counsel for the petitioner lastly submits that father of respondent No.3 retired in the year 2007, but respondent No.3 has approached the Industrial Court in the year 2012. There is inordinate delay in filing complaint before the Industrial Court. The complaint thus suffers from delay and laches and consequently, respondent No.3 is not entitled for any relief. It appears from the record that father of respondent No.3 had filed writ petition No. 1542 of 2008 seeking pensionary benefits since his claim for pensionary benefits was denied by the present petitioners. The Division Bench of this

Court by order dated 25.8.2010 directed the present petitioner to compute pensionary benefits payable to the petitioner. Respondent No.3 had thereafter, filed writ petition No. 814 of 2011 for directions to the present petitioner to make compassionate appointment in view of recommendations of Lad Committee. The said writ petition was heard by Hon'ble Division Bench and by order dated 3.7.2012, directed respondent No.3 to approach the Industrial Court for his grievance with further directions to the authority to decide the complaint, if filed, within one year after its initiation. Accordingly, respondent No.3 has approached the Industrial Court by filing complaint (ULP) No. 123 of 2012. Therefore, I do not think that the complaint of respondent No.3 suffers from delay and laches. It appears from the observations of learned Member of the Industrial Court in the impugned judgment that, in the year 2002, similarly situated two persons were appointed in place of their father as per recommendations of Lad Committee by the present petitioner. There is no reason to give such discriminatory treatment to respondent No.3 when he is entitled for the appointment on compassionate ground in place of his father, as per recommendations of Lad committee.

13. The learned counsel for the petitioner has placed reliance on two cases as stated above, to elaborate the concept of

compassionate appointment. However, as per the recommendations of Lad Committee, such appointments are to be construed as appointment on the basis of Vashila Paddhati. In view of Annexure to Government Circular dated 23.3.2006, certain legal heirs of retired *Safai Kamgars* are also entitled for appointment. In view of this, the above cited cases are not helpful to the petitioner in any manner.

14. In view of the above discussion, the impugned judgment and order dated 6.8.2013, passed by the learned Member of Industrial Court, Latur in complaint (ULP) No. 123 of 2012, calls for no interference. Writ petition is devoid of any merits and the same is dismissed. Rule discharged. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

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