

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

WRIT PETITION NO.373 OF 2015

Smt. Devkabai w/o. Dadarao Kasare,
Age 40 years, Occu: Household
R/o. Khultabad, Tal. Khultabad,
District Aurangabad

PETITIONER

VERSUS

- 1] The State of Maharashtra
Through
- 2] The Collector, Aurangabad
District Aurangabad
- 3] Nagar Parishad, Khultabad,
Through its Chief Officer,
Khultabad, Tal. Khultabad,
District Aurangabad

RESPONDENTS

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Mr. C.V.Thombre, Advocate for the Petitioner
Mr. S.K.Kadam, AGP for the Respondent No.1
Mr. V.A.Bagal, Advocate for the Respondent No.3
Respondent No.2 served.

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**CORAM: S.S.SHINDE &
A.M.BADAR, JJ.**

Reserved on : 01.10.2015
Pronounced on: 15.10.2015

JUDGMENT: [Per S.S.Shinde, J.]:

- 1] Heard.
- 2] Rule. Rule made returnable forthwith, and
heard with the consent of the parties.

The background facts for filing this Writ Petition as disclosed in the memo of Petition are as under:

3] It is the case of the petitioner that, the petitioner had filed Writ Petition No.5530/2005 in this Court, seeking directions against the respondents to appoint the petitioner No.2 therein on compassionate ground as per the policy of the Government, and the respondents may be directed to decide the proposal of the petitioner for giving appointment on compassionate ground within reasonable period. It is further the case of the petitioner that, this Court, initially, issued notices to the respondents, thereafter, the matter was finally decided on 12.12.2005.

4] On 12.04.2006, the petitioner submitted an application under Right to Information Act, 2005, and requested to supply information regarding vacancy available in the office of respondent No.4 therein. On the basis of application under Right to Information Act, 2005, the information was supplied to the petitioner, in which at serial No.2, Class-IV sanctioned posts were shown 4, vacant posts were shown 5, in which 4 posts are temporary and one permanent. It is further the case of the petitioner that, on 06.07.2007, an advertisement was issued in daily '*Sakal*'

for the post of Peon from Open and Handicapped category person. On 10.07.2007, the petitioner, immediately, submitted an application to the respondent Nagar Parishad, and it was pointed out that, the respondent Nagar Parishad in order to give go-bye or disregards to the order passed by the High Court appointed 5 persons on Class-IV posts as Safai Kamgar, but not appointed the petitioner. It is further the case of the petitioner that, though the posts are available, the petitioner was not appointed. The Contempt Petition filed by the petitioner was disposed of in the light of the statement made by the learned counsel appearing for the respondent Municipal Council that, the claim of the petitioner will be considered as and when posts are available. Thereafter, the petitioner sought information from the office of respondent, which shows that, though the posts are available the name of the petitioner was not considered and near about 5 posts are filled as per the information supplied on 8th February, 2010.

5] The learned counsel appearing for the petitioner submits that, the petitioner filed Writ Petition No.5530/2015 before the Bombay High Court, Bench at Aurangabad, wherein the Division Bench on 12th December,

2005 held that, entitlement of the petitioner No.1 to claim compassionate appointment in the place of deceased, is not in dispute. He further submits that, when the said Writ Petition was disposed of, the learned counsel appearing for the respondent No.4 i.e. Nagar Parishad, Khultabad therein, made a statement before the Court that, as and when a vacancy in the post of Safai Kamgar would occur, the petitioner No.1 i.e. Smt.Devkabai Dadarao Kasare will be appointed in the said vacancy. It is submitted that, on 06.07.2007, an advertisement was issued in daily '*Sakal*' for the post of Peon from Open and handicapped persons category, the petitioner submitted an application to the respondent Nagar Parishad, stating therein that, in total disregard to the order passed by the High Court dated 12th December, 2005, the respondent – Nagar Parishad appointed 5 persons on Class-IV post as Safai Kamgar namely Sakhubai Gorakh Agale, Ramesh Karbhari Pachwane, Ramesh Avhad, Revannath Alhad and Santosh Avhad, however, the petitioner was not appointed. The respondent Nagar Parishad is playing mischief in order to avoid compliance of the court's order. It is submitted that, Contempt Petition No.272/2007 was filed by the petitioner, since the respondent Nagar Parishad did not comply the

order passed by the Division Bench in Writ Petition No. 5530/2015. The said Contempt Petition was disposed of by this Court, on the basis of an affidavit filed by the then Chief Officer, Nagar Parishad, Khultabad. In para 2 of the said affidavit-in-reply, it was stated that, as and when the vacancy in the post of Safai Kamgar would occur, the petitioner No.1 would be appointed in the said vacancy and would forward the papers for seeking approval of the Collector and/or Commissioner. It is submitted that, in spite of giving such assurance by way of filing affidavit, other 4 persons are appointed, but the petitioner was denied appointment. It is submitted that, the claim of the petitioner is rejected by giving flimsy reasons. Therefore, the learned counsel appearing for the petitioner submits that, the Petition deserves to be allowed.

6] In pursuant to the notices issued to the respondents, the respondent Nos.2 and 3 have filed affidavit-in-reply. It is stated in para No.13 of the said affidavit-in-reply that, the post of Safai Kamgar, as such, is not vacant at present in the office of the respondent No.3. However, for the purpose of cleaning of the roads and drainage within the Municipal limit of the Khultabad

Municipal Council, the respondent no.3 had invited tenders from the concerned Contractor and after following due process, the work of cleaning of the streets and drainages within the Municipal limits of Khultabad has been allotted to Shri Ratan Pachwane @ Rs.460/- for 7 workers. The said workers are working in accordance with the terms and conditions of the contract / tender, and they are not the employees of the respondent no.3 Municipal Council. It is further stated in para 14 of the said affidavit-in-reply that, the Standing Order dated 19.10.2004 has been issued by the Directorate of the Municipal Administration, by which it is communicated to all concerned that, henceforth no seasonal or daily wages appointment should be given to any person without preparation of the staffing pattern, and the sanction of the District Collector and Divisional Commissioner. It is stated in para 15 of the said affidavit-in-reply that, Smt. Nanabai Kasare was not permanent employee of the respondent No.3 until her death, and her services were not absorbed with the respondent No.3, so also by considering the fact that, as on today, as per the staffing pattern, the Class-IV post of Safai Kamgar in the office of the respondent No.3 is not vacant. The said issue has been decided by this Court in Writ Petition

No.5530/2005 and in Contempt Petition No.272/2007. Therefore, the claim of the petitioner for appointment on the post of Safai Kamgar, cannot be considered. The respondent No.3 has filed additional affidavit-in-reply.

7] We have heard the learned counsel appearing for the petitioner, the learned AGP appearing for the Respondent – State, and the learned counsel appearing respondent Nos.2 and 3. Upon perusal of the earlier orders passed by this Court in Writ Petition No.5530/2005, the Division Bench of this Court, after considering the submission, made by the then respondent No.4 in para 2 held thus:

2. Learned counsel for Respondent No.4 – Nagar Parishad submits that the deceased was working as Safai Kamgar and, as such, the petitioner would also be accommodated in the post of Safai Kamgar as and when the vacancy would arise. The Divisional Commissioner has not granted permission to the Nagar Parishad for creation of an additional post, with a view to appoint the present petitioner no.1. However, it cannot be disputed that as and when a vacancy occur in the Class IV post, the petitioner no.1 will have to be granted appointment on compassionate ground. Learned counsel for respondent no.4 – Nagar Parishad submits that as and when a vacancy in the post of Safai Kamgar would occur, the petitioner no.1 would

be appointed in the said vacancy and would forward the papers for seeking approval of the Collector and/or Commissioner.

8] It further appears that, when the Contempt Petition No.272/2007 in Writ Petition No.5530/2005 filed by the present petitioner [Smt.Devakabai Dadarao Kasare & another Vs. The State of Maharashtra & others] was decided by this Court on 11th December, 2007. The statement was made on behalf of the learned counsel appearing respondent No.4 therein that, subsequent to the order passed by the High Court, no person has been appointed on compassionate ground on the post of Safai Kamgar. In that view of the matter, the said Contempt Petition was disposed of. It appears that, when the petitioner approached respondent No.3 by way of filing application on 15th January, 2014, requesting therein for her appointment as Safai Kamgar. The Chief Officer, Municipal Council, Khultabad rejected the claim of petitioner, on the ground that, Smt. Nanabai Kachru Kasare in whose place the petitioner is seeking appointment on compassionate ground, though the Municipal Council passed the order to make her permanent, since said Smt. Nanabai Kacharu Kasare died on 22nd April, 2001, the said order was not

served upon her. It is also mentioned in the communication that, Writ Petition No.5530/2015, which was filed by the petitioner, came to be dismissed. In fact, the Chief Officer has made incorrect statement inasmuch as the aforementioned Petition was not dismissed, but was disposed of in the light of the statement made by the learned counsel appearing for the respondent Nagar Parishad.

9] In that view of the matter and in view of earlier undertaking given by the Advocate appearing for the Chief Officer, Municipal Council, Khultabad, the reasons assigned in the impugned communication are incorrect, and accordingly, impugned communication deserves to be quashed and set aside. Accordingly, the impugned communications dated 18.01.2014 and 20.01.2014 addressed to the Collector and of which the copy was issued to the petitioner, rejecting the claim of the petitioner on the ground of dismissal of Writ Petition, stands quashed and set aside. As and when a vacancy of Safai Kamgar would arise, the respondent No.3 shall appoint the petitioner on the said post on compassionate ground. We make it clear that, any attempt on the part of the respondent No.3 to appoint any other person than the

petitioner on the post of Safai Kamgar, as and when post becomes vacant or available, will be dealt with seriously in accordance with law.

10] Rule is made absolute in above terms. Petition stands disposed of accordingly.

Sd/-

[A.M.BADAR]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE

DDC