

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

WRIT PETITION NO.11012 OF 2015

Ahmednagar Mahanagar Palika,
Ahmednagar.
Through its Commissioner.

...PETITIONER

-VERSUS-

- 1 Muktabai w/o Bhaskar Temkar,
Age : 40 years, Occupation : Labourer.
- 2 Vikram s/o Bhaskar Temkar,
Age : 20 years, Occupation : Labourer.

Both R/o Bhingardive Mala,
Bhutkarwadi, Balika Ashram Road,
Ahmednagar.

...RESPONDENTS

...
Advocate for Petitioner : Shri Bedre Vinayak Sudhakar.
Advocate for Respondents : Shri Barde Parag Vijay.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th November, 2016

Oral Judgment :

- 1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

- 2 The Petitioner is aggrieved by the judgment and order dated

16.04.2015 delivered by the Industrial Court, Ahmednagar by which Complaint (ULP) No.77/2012 filed by the Respondents has been allowed and Respondent No.2 (Vikram son of deceased Bhaskar Temkar) is directed to be appointed on compassionate basis on the post of “Bigari”.

3 I have heard the learned Advocates for the respective sides for quite sometime.

4 Considering the submissions of the learned Advocates, the following aspects, which are relevant and significant for adjudicating the claim of the Respondents, are as under:-

- (a) The Government Resolution dated 05.03.2001 has not been considered by the Industrial Court.
- (b) 511 temporary workers from Class-IV category are granted certain benefits by the Government Resolution dated 05.03.2001.
- (c) Shri Barde, learned Advocate for the Respondents, submits that the deceased Bhaskar does not figure in the list of 511 employees.
- (d) Shri Bedre, learned Advocate for the Petitioner, points out that the Respondents admitted in the cross examination before the Industrial Court that the deceased Bhaskar was in

the list of the said 511 daily rated employees.

- (e) The corrigendum was issued on 05.03.2001 along with the Government Resolution dated 05.03.2001 indicating that temporary/ daily rated employees working in Class III and IV categories have been granted regularization as a one time case and they shall occupy the said positions as permanent employees. Upon their retirement and upon relinquishing the said posts for any reason whatsoever, the said posts would be abolished. This was also not considered by the Industrial Court.
- (f) The grievance of the Petitioner is that the corrigendum dated 05.03.2001 establishes the fact that if any post out of the said 511 posts, falls vacant for any reason, the said post shall stand abolished and therefore, neither the wife of the deceased nor the son of the deceased can claim compassionate appointment in place of the deceased.
- (g) There is no discussion in the impugned judgment that the Respondent Vikram son of deceased Bhaskar had ever applied for being appointed on compassionate basis within the limitation as is provided by the relevant Government Resolutions.
- (h) There is no dispute that the wife of the deceased Bhaskar had

applied for compassionate appointment within limitation.

5 All the above mentioned aspects have been lost sight off by the Industrial Court while dealing with the complaint. It cannot be ignored that the claim of the Respondent for compassionate appointment is not a crystallized right or an inherent right. An opportunity to be appointed on compassionate basis is under the Rules or Service Conditions or Settlement, if any. The above aspects go to the root of the matter and the Industrial Court was obliged to take those factors into account while dealing with the impugned judgment. Since these factors were not considered, the impugned judgment is rendered perverse and unsustainable.

6 In the light of the above, this Writ Petition is partly allowed. The impugned judgment dated 16.04.2015 is quashed and set aside and Complaint (ULP) No.77/2012 is remitted back to the Industrial Court on the following conditions:-

- (a) The litigating sides shall appear before the Industrial Court on 09.12.2016.
- (b) Both the litigating sides are at liberty to place on record the relevant documentary material and lead oral evidence in order to prove the documents on which they place reliance.

- (c) If Respondent No.2 (Virkam) has not filed an application for seeking appointment on compassionate basis with the Petitioner within the limitation period, his claim for compassionate appointment shall not be considered by the Industrial Court.
- (d) Needless to state, the Industrial Court shall be obliged to consider the factors listed in the foregoing paragraphs of this judgment, while deciding the complaint afresh.
- (e) Since the issue of compassionate appointment is involved, the Industrial Court shall endeavour to decide the said complaint as expeditiously as possible, with the due cooperation of the litigating sides.

7 Rule is made partly absolute in the above terms.